

RESOLUTION NUMBER 6652

A RESOLUTION AMENDING A FEE SCHEDULE FOR COPIES AND RESEARCH OF PUBLIC RECORDS PURSUANT TO SECTION 7-1-4144 and 7-1-4123 MONTANA CODE ANNOTATED AND A FEE SCHEDULE FOR COPIES AND RESEARCH OF ELECTRONIC PUBLIC RECORD INFORMATION PURSUANT TO SECTION 2-6-110 MONTANA CODE ANNOTATED AND ESTABLISHING PROCEDURES FOR REQUESTING PUBLIC RECORDS FOR IMPLEMENTATION AND COLLECTION OF THE FEE SCHEDULE.

**WHEREAS**, Section 7-1-4144 Montana Code Annotated (MCA) ensures that all people are allowed access to appropriate public records consistent with the provisions of the Montana Constitution while allowing for the governing body to impose reasonable fees for copies of accessible records; and,

**WHEREAS**, Section 2-6-110 Montana Code Annotated ensures that the access to public records ensured by the Montana Constitution and Section 7-1-4144 MCA is extended to electronic information and that fees may be charged to cover directed expenses with procuring or transferring the electronic information; and,

**WHEREAS**, Subsection 7-1-4123(7) Montana Code Annotated empowers municipalities to impose a special assessment reasonably related to the cost of any special service or special benefit provided by the municipality or impose a fee for the provision of a service; and,

**WHEREAS**, the City Council of the City of Missoula, Montana did adopt Ordinance #2520 to establish a procedure for the City Council to adopt, amend, or repeal fees for services by City Council approval of an ordinance or resolution; and,

**WHEREAS**, one of the foundations of our system of democratic government is the people's right to know what their government is doing. Public records not only support the immediate needs of the government and insure its continuity; they protect the rights and interests of the people. Maintained over time, these records preserve the history of a community. Access to public records includes the individual right to review or inspect public records and obtain copies of public records; and

**WHEREAS**, the purpose of implementing a "public records request" policy is to: facilitate public access, protect individual privacy, protect public records from damage or disorganization, prevent excessive interference with other essential functions of the City and to develop a consistent and fair method of responding to requests for public records.

**NOW THEREFORE BE IT RESOLVED**; the following guidelines shall constitute the policy for the City of Missoula, to be followed in responding to requests for public records:

1. All requests for public records shall be subject to this policy.
2. Request forms are to be completed for any Non-Routine public information records that are pulled for review or copying. The form serves three functions: (1) to give the City a comprehensive understanding of the types of information being requested with an eye toward making it available on the internet or adding it to the list of routine public records requests for which fees are not charged; and (2) to be able to contact the requestor if a request cannot be filled right away; and (3) to provide a receipt for monies collected.
3. All request forms must be signed by the Department Head (or his/her designee) for the respective department. This shall constitute authorization for departmental staff to fill the request.

4. The City Clerk's office shall be the Office of Record for completed Records Request Forms. All request forms should be forwarded to the City Clerk upon completion and response to the request.
5. It should be noted on the form, what documents/files were reviewed or copied and the charges, if any, that were charged.
6. Once a request for records has been received, it will be responded to in a timely fashion, but no later than ten (10) business days. **The City will respond to any request to inspect records with an effort to allow viewing at the time of the request.**
7. Departments are not required to obtain a person's name and contact information in filling a request for public records. If a department cannot fill a request right away, it should try to get the name and contact information of the requestor to contact them when the request has been filled and is ready. Department heads or their designee have discretion about whether to require payment before or after service is provided.
8. Blank request forms should be available in all offices, to avoid sending citizens between offices and facilities.
9. NO NEW DOCUMENT OR RECORD will be created to respond to a records request. Applicable records may be made available for requester to compile his/her own data.
10. Any request, which does not refer to an "identifiable", public record, shall not be processed until the requester provides further information. It shall be the responsibility of the department receiving the request to notify requester that further information is required before the request can be processed and to attempt to get that information, so the request can be processed in a timely manner.
11. STAFF shall make copies of City records during normal office hours. For security reasons and to avoid unreasonable disruption of operations, copying facilities will not be available for use by the public.
12. Computer or Electronic Records will be made available pursuant to M.C.A. 2-6-110. (See details under Fees/Charges). Staff shall notify requester of the hourly rate that will be charged under this section, BEFORE proceeding with processing the request, thereby allowing requester the right to cancel request. The hourly rate shall be \$10/hour.
13. This resolution does not supersede any rules of evidence or rules governing the production of information or documentation in the course of litigation.

## **DEFINITIONS:**

- **Public Records:** (M.C.A. 7-1-4144).
  - (1) "Except as provided in subsection (2), all records and other written materials in the possession of a municipality shall be available for inspection and reproduction by any person during normal office hours. The governing body may impose reasonable fees for providing copies of public records.
  - (2) Personal records, medical records, and other records, which relate to matters in which the right to individual privacy exceeds the merits of public disclosure shall not be available to the public unless the person they concern requests they be made public.

(3) Except as provided by law and as determined by the chief law enforcement administrator, law enforcement records which relate to matters in which the right to individual privacy or law enforcement security exceeds the merits of public disclosure shall not be available to the public."

- *Per M.C.A. 2-6-202: Definitions:* (1) "Public records" includes any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies of the record required by law to be kept as part of the official record, regardless of physical form or characteristics, that has been made or received by a state agency to document the transaction of official business; is a public writing of a state agency pursuant to 2-6-101(2)(a); is designated by the state records committee for retention pursuant to this part; and all other records or documents required by law to be filed with or kept by any agency of the state of Montana. (b) The term includes electronic mail sent or received in connection with the transaction of official business. The term does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication. (This applies to the City as a political subdivision of the State of Montana.)
- *Records of officers open to public inspection.* M.C.A. 2-6-104. Except as provided in 27-18-111 and 42-6-101, the public records and other matters, except records that are constitutionally protected from disclosure, in the office of any officer are at all times during office hours open to the inspection of any person.
- *Removal of public records.* Any record. M.C.A. 2-6-105. A transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court or judge in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending or where the court is held in the same building with such office.
- *Prohibition on distribution or sale of mailing lists:* (M.C.A. 2-6-109)
  - (1) "Except as provided in subsections (3) through (8), in order to protect the privacy of those who deal with state and local government: (a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and (b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.
  - (2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.
  - (3) Except as provided in M.C.A. 30-9-403, this section does not prevent an individual from compiling a mailing list by examination of original documents or applications that are otherwise open to public inspection." (NOTE: Sections (4) through (8) apply to records not created by the City.)
- *Routine Public Information:* Material that is prepared for the public and is ``made available to them on a regular basis. This is often prepared for promotional or

advisory reasons and prepared in mass quantities for general distribution **with the intent of mass distribution**. NO REQUEST FORM IS REQUIRED for these materials. Examples: City Charter, City Council agendas and schedules, Board and commission agendas, Community Forum and Neighborhood Council agendas, Brochures, Pamphlets, Applications, Blank Bid packets, City Council list, Neighborhood Council contact list, etc.

- **Non-Routine Public Information:** Material prepared in the regular course of City business (i.e. regular departmental business records) that the public requests to view or have copied. These records **document regular business transactions by each department and are not prepared for mass distribution**. However, they are available to the public. THE REQUEST FORM MUST BE COMPLETED stating the record provided and signed by the department head or his/her designee before responding to the request.

NOTE: If a particular item of information is not contained in the departmental list(s) or if the department is unsure as to whether such information is required to have a request form completed, contact the City Clerk's Office OR have a request form completed.

If a department is unsure as to whether the information can be released to the public because of potential privacy concerns, contact the City Attorney's Office.

If a department has received a ruling from the City Attorney's Office regarding a certain type of record created and maintained by the department, the department shall continue to use that directive for that record until notified otherwise.

Due to the nature of change in municipal government, "drafts" often represent work in various stages of completion. Drafts should be stamped "DRAFT" and if copies are provided to the requester, the requester should be advised that the document is NOT final and subject to changes.

### **FEES/CHARGES:**

- (1) No fee will be charged for requests of those materials deemed to be Routine Public Information. (See *Definition on Page 3*).
- (2) Copy charges will be set at \$0.25/page for copies of any material deemed to be Non-Routine Public Information. (See *Definition on Page 3*). The hourly rate of \$10.00/hour will be charged for each hour, or fraction of an hour, after 30 minutes of copying/research service has been provided. Copies that are subject to the \$10.00/hour rate will be charged at the rate of \$0.10/page.
- (3) Published and/or documents prepared by commercial printing shops will be based on a "document charge" if the entire document is requested. The department will set the fee, to recover costs.
- (4) Copies of audio cassettes will be \$5.00/tape, provided the department has the ability to produce copies. This fee includes provision of the tape by the City. If the requestor supplies the audio cassette, the fee is \$4.00/tape.
- (5) Copies of video cassettes will be \$10.00/tape, provided the department has the ability to produce copies. This fee includes provision of the tape by the City. If the requestor supplies the video cassette, the fee is \$4.00/tape.

- (6) Copies of Compact Disks will be \$4.50, provided the department has the ability to produce copies. This fee includes provision of the CD by the City. If the requestor supplies the CD, the fee is \$4.00/CD.
- (7) Copies of Digital Video Disks will be \$8.00, provided the department has the ability to produce copies. This fee includes provision of the DVD by the City. If the requestor supplies the DVD, the fee is \$4.00/DVD.
- (8) Departments may set document fees for specific documents contained in their departments, such as maps, plats, etc. A fee schedule will be posted in each department – for those departments that have a fee schedule. For records not specific to a department, the departmental fee schedules should not conflict with the specific charges listed in this section.
- (8) Copies of computer generated documents or electronic information will be charged as follows (M.C.A. 2-6-110):
  - (a) the City's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;
  - (b) expenses incurred by the City as a result of computer processing charges;
  - (c) expenses incurred by the City for providing on-line computer access to the person requesting access;
  - (d) other out-of-pocket expenses directly associated with the request for information; and
  - (e) the hourly rate of \$10.00/ hour will be charged for each hour, or fraction of an hour, after 30 minutes of copying service has been provided.
- (9) Copy fees will NOT be charged to other cities requesting materials.
- (10) Copies for other governmental agencies or professional organizations will be provided on a "reciprocal" basis; if they charge the City, they will be charged.
- (11) The certification charge will be \$2.00. (M.C.A. 2-6-103).
- (12) Payment for charges must be received for copies released to the requester, whether in person, by mail, or by FAX .
- (13) To the extent possible, departments are encouraged to provide on the web the information citizens request most frequently.
- (14) **The mayor or his or her designee may waive the requirements of this policy, except those required by statute**

### **EXEMPTIONS:**

The following records are exempt from public disclosure UNLESS by subpoena or court order OR access is subject to restrictions as cited in parentheses:

- (1) Library patron records. (M.C.A. 22-1-1101.)
- (2) Medical records (M.C.A. 7-1-4144).
- (3) Records concerning a current or former employee or applicant for employment with, that would disclose the individual's home address, home telephone number, social security number, marital status, payroll deductions, insurance coverage, etc.
- (4) Performance evaluations. (M.C.A. 7-1-4144).
- (5) Certain donor records, provided donor requests anonymity.
- (6) Certain law enforcement records (M.C.A. 7-1-4144).
- (7) Ownership or pledge of public obligations (M.C.A. 17-5-1106).
- (8) Criminal justice records (M.C.A. 44-5-301 - 44-5-311).
- (9) Accident reports (M.C.A. 61-7-114).

If a citizen requesting public records does not feel a department is responding to their request in accordance with this policy, they may appeal to the Mayor's Office.

BE IT FURTHER RESOLVED, that Resolution 6323, is hereby repealed.

PASSED AND ADOPTED this 23rd day of June, 2003.

ATTEST:

APPROVED:

/s/ Martha L. Rehbein

Martha L. Rehbein

City Clerk

/s/ Mike Kadas

Mike Kadas

Mayor

**City of Missoula**  
**Request for Public Records Form**

I, \_\_\_\_\_, (Applicant), do hereby make application for inspection and/or copying of the following public records of the City of Missoula, Montana.

(Please be as specific as possible to assist us in locating the records as quickly as possible.)

Applicant Signature \_\_\_\_\_

Date \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Daytime Phone: \_\_\_\_\_

**Internal Use Only**

TO APPLICANT:

THE ABOVE REQUESTED RECORDS ARE: (check one)

- Available for inspection in the office of the City Clerk immediately upon processing your request.
- To be copied at your expense and will be made available to you on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.
- Not subject to disclosure pursuant to Montana Public Records Statutes (Art. II, Sec. 9, Mont. Const., MCA 7-1-4144)
- The subject of a written request for a determination from the Attorney General as to whether they are subject to disclosure.
- Not in existence, due to "vagueness" of request. (Not enough information to process request).
- Not in existence due to the fact that it requires the creation of documents.

Dept. Head Authorization: \_\_\_\_\_ Date: \_\_\_\_\_

I approve and agree to pay the copy fees associated with this request:

Applicant \_\_\_\_\_

Date \_\_\_\_\_

Initials of Person Filling Request \_\_\_\_\_  
Department \_\_\_\_\_  
\$ \_\_\_\_\_ Total Charge \_\_\_\_\_

*Note to Departments: Please forward this form to the City Clerk office when the request is completed and fully processed.*