COMMISSION RESOLUTION NO. 4446

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA, SUPERSEDING RESOLUTIONS 3030 AND 3432 AND ESTABLISHING A FEE SCHEDULE FOR COPIES AND RESEARCH OF PUBLIC RECORDS AND ELECTRONIC PUBLIC RECORDS AND ESTABLISHING PROCEDURES FOR REQUESTING PUBLIC RECORDS AND FOR IMPLEMENTATION AND COLLECTION OF THE FEE SCHEDULE.

WHEREAS, §7-1-4144, Montana Code Annotated (MCA) states all records and other written materials in the possession of the City shall be available for inspection and reproduction by any person during normal office hours consistent with the provisions of the Montana Constitution while allowing the governing body to impose reasonable fees for copies of accessible records; and

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

WHEREAS, §7-1-4123 (7), MCA, empowers the City to impose a special assessment reasonably related to the cost of any special service or special benefit provided by the City or impose a fee for the provision of a service; and

WHEREAS, the City Commission approved Resolution No. 3432 on March 26, 2001, establishing fees for copies of maps or digital information provided by City employees; and

WHEREAS, the City Commission approved Resolution No. 3030 on November 21, 1994 establishing fees for copies of public records provided by the City; and

WHEREAS, the purpose of implementing a “public records request” policy is to: facilitate public access to official records; protect individual privacy, confidentiality, business secrets, and copyrighted material; protect public records from damage or disorganization; prevent excessive interference with other essential function of the City; and develop a consistent and fair method of responding to requests for public records; and
WHEREAS, The City will regularly review fees charged by other governmental entities available data and will make adjustments to its fee schedules when necessary ensure fees are nondiscriminatory, equitable and reasonable; and

WHEREAS, The City makes reasonable accommodations for persons with disabilities in compliance with established policies and as required by law.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Bozeman, Montana, that the following policy and procedures shall be adopted and shall be followed in responding to requests for public records and that the fee schedule listed herein is hereby adopted and shall be applied:

SECTION 1: PROCEDURES

1. All requests for public records shall be subject to this policy.

2. Record request forms shall be developed by the City Clerk in a similar format to the attached, who shall distribute the forms to all City departments, agencies, committees, and boards for use in processing requests for non-routine public records. For all non-routine public records the person or entity requesting such record shall complete the form and provide it to the appropriate department, agency, committee, or board prior to review or copying. The record request form serves four functions: (1) to give the City a comprehensive understanding of the specific information being requested; (2) to allow the City Attorney, if necessary, to review the request pursuant to this Resolution and law; (3) to facilitate making documents repeatedly requested available on the internet or to add the requested documents to a list of routine public records requests for which fees are not charged; (4) to facilitate communication with the requester; and; (5) to provide a receipt for monies collected.

3. The City Clerk's Office shall be the office of record for all completed records request forms.

4. Records requests for any non-routine public information shall be submitted to the City Clerk by an individual or entity requesting public records or by a City department receiving such a request. In fulfilling a request for public records the following procedures shall be followed:
   (a) Upon a request for a public record(s), the City Clerk will forward the request to the proper City department, agency, committee, or board.
   (b) The department, agency, committee, or board will process the request and forward the public records and completed form to the City Attorney for review.
   (c) The City Attorney will review the public records to determine whether the information contained in the public records can be released. The City Attorney shall consider whether the requested records contain information related to a matter of individual privacy, confidential business or trade secrets, copyrighted material, proprietary financial information, important security information, or other information that would prohibit disclosure of such information to the
requestor. If releasable, the City Attorney shall notify the department of any adjustments or required redactions to the public records prior to their release.

(d) If adjustments or redactions to the records are required prior to release, the department, agency, or board will make them, send the adjusted/redacted version back to the City Attorney for final review. The City Attorney will notify the City Clerk of the status of the fulfilled request and forward the request form with the records in releasable form to the City Clerk.

(d) The City Clerk will contact the requestor and collect payment. Public records may not be released by the City Clerk or any other department, board, or agency of the City until payment of all required fees. Payment maybe made in a form determined by the City Clerk.

(e) The City Clerk shall track all requests for non-routine public records.

5. Once a request for records has been received, a response will be made within a reasonable amount of time. The following exceptions may apply:
(a) the record does not exist or cannot be found;
(b) if the record is in use or unusual circumstances have delayed handling the request, the requester shall be informed of the reason for the delay and of a reasonable time frame for response; or,
(d) the request is denied and the requester will be informed of the reason for the denial.

6. Records request forms shall be available in the City Clerk’s Office or the City’s Clerk’s page on the city website www.bozeman.net for citizens seeking non-routine public records.

7. A Digital File Use Agreement in a similar form as attached may be required for requests for proprietary electronic public information requests.

8. 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 subject to law, including the legal restrictions regarding creation of mailing lists from public records. See Sect. 2-6-109, MCA.

9. 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, agency, committee, or board receiving the request to notify the requester that further information is required before the request can be processed.

10. Computer or electronic records will be made available pursuant to §2-6-110, MCA. The City shall notify the requester that an hourly rate will be charged per the fee schedule before proceeding with processing the request, thereby allowing requester the right to cancel request.
11. This Resolution does not supersede any rules of evidence or rules governing the production of information or documentation in the course of litigation.

SECTION 2: FEES/CHARGES FOR PUBLIC RECORDS:

(1) No fee will be charged for requests of records deemed by the City to be routine public records as defined under section four (4) of this Resolution.

(2) Charges for paper copies of non-routine public records shall be charged at the rate of $0.25/page for material that can be found and copied in ten minutes or less. Material which take more than ten minutes to located and copy shall be charged at the rate of $0.50/page. Items that take over 30 minutes to locate and copy shall be charged upon the hourly market rate at the time of the request for an administrative assistant in pay band 3 of the State of Montana’s broadband pay plan, as provided for in §2-18-301, MCA.

(3) Requests that are subject to the “per hour rate” shall also be charged at the rate of $0.10/page for costs associated with copying materials.

(4) Fees for published and/or documents prepared by commercial print shops will be based on an established “document charge.”

(5) A City department, board, committee, or agency may establish fees for specific records contained in their departments, such as maps, plats, etc. Such fee schedule shall be approved by the City Manager and posted in each department. For records not specific to a department, the departmental fee schedules should not conflict with the specific charges listed in this section.

(6) Copies of electronically stored records provided in electronic format will be charged as follows (see §2-6-110, MCA):

(a) the City’s actual cost per unit of the electronic media used to provide the public record. For security purposes, the City will provide all blank 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;
(d) out-of-pocket expenses directly associated with the request; and
(e) the hourly market rate at the time of the request for an administrative assistant in pay band 3 of the State of Montana’s broadband pay plan, as provided for in §2-18-301, MCA, for each hour, or fraction of an hour, after one-half hour of copying service has been provided.

(7) Records provided to other governmental agencies may be provided on a “reciprocal” basis at the discretion of the department director responsible for the record:

(8) Payment for charges must be received before delivery of the records to the requester. A department director may make accommodations for payment by entities frequently requesting records.

(9) To the extent possible, departments are encouraged to provide on the City’s external web site or on the City’s document center records citizens request most frequently.

(10) The City will determine on a case-by-case basis whether an employee must be present to observe and supervise the examination of documents and whether documents can be removed from their official storage location. Where it is necessary to maintain the integrity and security of City records, a fee as determined by the hourly market rate at
the time of observation for an administrative assistant in pay band 3 of the broadband pay plan, as provided for in §2-18-301 MCA will be charged for the City’s supervision of the search and examination and copying of public records.

(11) The City Manager may waive fees upon demonstration by the requestor that payment of the fees required under this Resolution will result in undue hardship.

SECTION 3: EXEMPTIONS:

The following public records are exempt from public disclosure unless required by court order or dissemination is required pursuant specific statutory authorization:

- Library patron records (§22-1-1103, MCA)
- Medical records (§7-1-4144, MCA)
- Personnel Records concerning a current or former employee or applicant for employment that would disclose the individual's home address, home telephone number, social security number, marital status, payroll deductions, insurance coverage, or other privacy information.
- Performance evaluations (§7-1-4144, MCA):
- Certain donor records including financial or physical donations where the donor requests to remain anonymous.
- Ownership or pledge of public obligations. (§17-5-1106, MCA)
- Criminal justice records or Municipal Court Records (§§44-5-301-44-5-311, MCA)
- Vehicle accident reports. (§61-7-114, MCA);
- Insurance information (e.g. §50-63-403, MCA); 6
- Information related to medical marijuana registry information (§50-46-332, MCA); and
- Any other records held or maintained by the City made confidential by law.

SECTION 4: DEFINITIONS:

The following definitions apply to Sections 1, 2, and 3 of this Resolution:

**Routine Public Records**

Material that is prepared for the public and made available to them on a regular basis. This information is often prepared for promotional or advisory reasons and prepared for general distribution. No request form is required for these materials.

Examples: City Charter, Ordinance, Resolutions, Minutes, City Commission Agendas, Meeting Packets, Board and Commission Agendas, Neighborhood Council Agendas, Brochures, Pamphlets, Applications, and Blank Bid Packets.

Many of the routine public information items can be found on the City website:
www.bozeman.net

Non-Routine Public Records

Material prepared in the regular course of City business (i.e. regular departmental business records) that document regular business transactions by each department but are not prepared for mass distribution. **The request form must be completed.**

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

Each department will create categories for Routine and Non-Routine Public records.

PASSED AND ADOPTED by the City Commission of the City of Bozeman, Montana, on this 26th day of August, 2013.

SEAN A. BECKER
Mayor

STACY ULMEN, CMC
City Clerk

APPROVED AS TO FORM:

GRÉG SULLIVAN
City Attorney
City of Bozeman

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 Bozeman, Montana. By signing, I am confirming that I have read and agree to Resolution No. 4446.

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

Applicant Signature ________________________________ Date ________________________________

Fill out only if request cannot be filled right away, so we can contact you when the copies are made.

Do you prefer to receive your request through (circle): Email Mail Pick-up

Name: ___________________________________________

Address: _________________________________________

Daytime Phone: ____________________________________

Internal Use Only
TO APPLICANT:

THE ABOVE REQUESTED RECORDS ARE: (check one)

☐ Available for inspection 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
City of Bozeman

Digital Files Use Agreement

Digital files including, but not limited to, hydraulic model data, maps, exhibits and other drawing files or data files generated for and/or by the City of Bozeman for various planning and management tasks associated with the City’s existing and future infrastructure may, at the City’s discretion, be made available to the public or private individuals.

Costs or fees associated with obtaining such data may be charged, at the City’s discretion, to help offset the public’s cost in obtaining, generating, maintaining and updating the information.

In making said data available, the City implies or offers no warranties of any kind with regard to the completeness or accuracy of the information provided and accepts no liability of any kind including but not limited to any losses or damages that result from reliance on this information. The user is fully responsible for any subsequent use or reuse of the data, and shall be solely responsible for verification of results.

The data files provided by the city may not be reproduced for sale or otherwise provided to any other parties.

The below signed party hereby warrants that they possess proper license(s) for all software in which the digital data will be used, and further indicates they understand and unconditionally agree with all terms and provision stipulated herein.

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