



**- - AMENDED - -**

**Item:** Resolution 10141, Establishing Procedures and a Fee Schedule for Copies and Research of Public Records

**From:** Lisa Kunz, City Clerk

**Presented By:** Lisa Kunz, City Clerk

**Action Requested:** Conduct public hearing and adopt Resolution 10141

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**Public Hearing:**

1. Mayor conducts public hearing, calling three times each for opponents and proponents.
2. Mayor closes public hearing and asks the will of the Commission.

**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (adopt/deny) Resolution 10141, Establishing Procedures and a Fee Schedule for Copies and Research of Public Records.”

2. Mayor requests a second to the motion, Commission discussion, and the calls for the vote.
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**Staff Recommendation:** Conduct a public hearing and adopt Resolution 10141, Establishing ~~Municipal Court Fees Relating to Information Requests~~ **Procedures and a Fee Schedule for Copies and Research of Public Records.**

**Background:** The City Commission adopted Resolution 9913 establishing procedures, and a fee schedule, for copies and research of public records on January 18, 2011.

The 2015 Montana Legislature completely rewrote Montana’s public record statutes. The Legislature enacted HB 123, which repealed Montana’s long-standing public records statutes and replaced them with an entirely new set of laws. The purpose was to ensure efficient and effective management of public records and public information, in accordance with Article II, Section 8 through 10, of the Montana Constitution, for the state of Montana and its political subdivisions. These new laws went into effect October 1, 2015.

Because of the way the City has been responding to requests for information since 2011, the only substantive changes in the City’s processes with this resolution is the estimation of costs and the

recoupment of actual costs incurred in responding to requests, as well as a written explanation should it be determined to deny all or part of a request, which were not required or authorized by the former statutes.

Public information and public records were defined in HB 123, now codified at Mont. Code Ann. § 2-6-1002, as follows:

Public Information – 2-6-1002 (11)	Public Record – 2-6-1002 (13)
Information <u>prepared, owned, used, or retained</u> by any public agency <u>relating to the transaction of official business</u> , regardless of form, <u>except for confidential information</u> that must be protected against public disclosure under applicable law.	Public information that is: (a) fixed in <u>any medium</u> and is <u>retrievable in usable form</u> for future reference; <u>and</u> (b) <u>designated for retention by the</u> state records committee, judicial branch, legislative branch, or <u>local government records committee</u> .

The Legislature created a Local Government Records Committee in 1993 to oversee the preservation and disposal of public records kept by local governments and school districts. Local governments are required to manage public records according to the rules and guidelines established by the Local Government Records Committee. The Local Government Records Committee consists of Jodie Foley, Montana Historical Society – State Archives; Joe DeFilippis, Secretary of State – Records and Information Management; Kay Johnson, Blaine County Clerk of District Court; Bonnie Ramey, Jefferson County Clerk and Recorder; Terry Atwood, Genealogy Representative; Marty Rehbein, Missoula City Clerk; Beth Riitano, Department of Administration Local Government Services; and, Keith Belcher, Missoula County Records Manager.

The costs associated with records requests include staff time to conduct research and to gather and compile the documents, as well as paper, copier supplies and maintenance expenses. Resolution 9913 established procedures that all non-routine public records requests must be made through the City Clerk’s Office, providing consistent protocol for City departments that did not already have established processes and fees. The Municipal Court, City Attorney’s Office and Great Falls Fire Rescue have established fees – Resolutions 10133, 10065 and 10070 respectively. The City Clerk’s public records fees have not been amended since the adoption of Resolution 9913 in January of 2011.

Fees for public information requests were clarified in HB 123, now codified at Mont. Code Ann. § 2-6-1006, in pertinent part as follows:

Upon receiving a request for public information, a public agency shall respond in a timely manner to the requesting person by:

(a) making the public information maintained by the public agency available for inspection and copying by the requesting person; or

(b) providing the requesting person with an estimate of the time it will take to fulfill the request if the public information cannot be readily identified and gathered and any fees that may be charged pursuant to subsection (3).

(3) A public agency may charge a fee for fulfilling a public information request. Except where a fee is otherwise provided for by law, the fee may not exceed the actual costs directly incident to fulfilling the request in the most cost-efficient and timely manner possible. The fee must be documented. The fee may include the time required to gather public information. The public agency may require the requesting person to pay the estimated fee prior to identifying and gathering the requested public information.

(4) A public agency is not required to alter or customize public information to provide it in a form specified to meet the needs of the requesting person.

(5) If a public agency agrees to a request to customize a records request response, the costs of the customization may be included in the fees charged by the agency.

There are exceptions to access to public information wherein a request may be denied. Mont. Code Ann. § 2-6-1003 sets forth, in pertinent part: A public officer may withhold from public scrutiny information relating to individual or public safety or the security of public facilities . . . A public officer may not withhold from public scrutiny any more information than is required to protect the individual or public safety or the security of public facilities. Per Mont. Code Ann. § 2-6-1009, a public agency that denies an information request to release information or records shall provide a written explanation for the denial.

Additionally, to protect the privacy of those who deal with state and local government, Mont. Code Ann. § 2-6-1017 sets forth, in pertinent part, that a public agency may not distribute or sell a distribution list without first securing the permission of those on the list; and a list of persons prepared by a public agency may not be used as a distribution list without first securing the permission of those on the list except by that agency. “Distribution list” means any list of personal contact information collected by a public agency and used to facilitate unsolicited contact with individuals on the distribution list.

Therefore, to ensure the continued efficient and effective management of public record requests, in accordance with Article II, Sections 8 – 10 of the Montana Constitution, staff requests that the Commission adopt Resolution 10141 consistent with the intent, and in accordance with, the updated language set forth in Montana’s new public records laws.

**Concurrences:** The proposed Resolution is consistent with language set forth in state law, and guidelines set forth by the Secretary of State’s Office and the Local Government Records Committee.

**Alternatives:** The Commission could choose to not adopt Resolution 10141.

**Attachments/Exhibits:** Resolution 10141 and Request for Public Records Form

## **RESOLUTION NO. 10141**

### **A RESOLUTION ESTABLISHING PROCEDURES AND A FEE SCHEDULE FOR COPIES AND RESEARCH OF PUBLIC RECORDS**

**WHEREAS**, members of the public and organizations often request copies of public records; and

**WHEREAS**, government records may be available for inspection and copying by the requesting person pursuant to Article II, Section 9 of the Montana Constitution, and Mont. Code Ann. § 2-6-1006; and

**WHEREAS**, the costs in providing these services include paper, copier supplies, maintenance expenses, and staff time; and

**WHEREAS**, to meet the demands of public record requests, the City Commission adopted Resolution 9913, “A Resolution Establishing Procedures and a Fee Schedule for Copies and Research of Public Records” on January 18, 2011. Fees have not been adjusted since that time; and

**WHEREAS**, the 2015 Montana Legislature completely rewrote Montana’s public record statutes. The Legislature enacted HB 123, which repealed Montana’s long standing public records statutes and replaced them with an entirely new set of laws that went into effect on October 1, 2015; and

**WHEREAS**, to ensure the continued efficient and effective management of public record requests, it is deemed necessary and appropriate to adjust fees associated therewith consistent with the intent and in accordance with the new public records laws.

**NOW, THEREFORE, BE IT RESOLVED** by the City Commission of the City of Great Falls, Montana, that the following procedures and fees be applied in all City departments in responding to requests for public records, except for Municipal Court, City Attorney’s Office and Great Falls Fire Rescue, that have established processes and fees:

<b>Procedures:</b>	
1.	All non-routine public record requests shall be made through the City Clerk’s Office.
2.	Request for Public Records Forms are to be completed for any non-routine public records (material prepared in the regular course of City business not prepared for mass distribution) that are pulled, gathered and/or compiled for inspection and/or copying. The form serves three functions: (1) to give the City a comprehensive understanding of the types of records being requested; (2) to be able to contact a requester if a request cannot be responded to in a timely manner; and, (3) to provide a receipt for monies collected.
3.	Records will be provided in the form it exists, allowing the requester to inspect the records and compile data in their own format. The City is not required to alter or customize public information to provide it in a form specified to meet the needs of the requesting

	person.
4.	Any request which does not refer to an “identifiable” public record shall not be processed until the requester provides further information.
5.	To maintain the integrity and security of City records staff may need to supervise the requester’s examination of public records.
6.	The City Clerk’s Office shall be the office of record for completed “Request for Public Records” forms.
7.	Should it be determined to deny a Request for Public Records and not release information or records, in whole or in part, a written explanation shall be provided to the requester for the denial.

<b>Fees/Charges:</b>		
1.	Photocopy charge	\$0.25/page
2.	<p>In addition to the photocopy charge set forth above, an hourly fee will be charged for each hour, or fraction of an hour after 30 minutes of copying/research to fulfill the request (including electronic/non-print records)</p> <p>Requester shall be provided an estimate of the time it will take to fulfill the request if the public information cannot be readily identified and gathered.</p>	<p>The fee may not exceed the <u>actual costs</u> directly incident to fulfilling the request in the most cost-efficient and timely manner possible. The fee must be documented.</p> <p>The fee may include the time required to gather public information.</p>
3.	Copies of records on Digital Media (for example: CD, DVD, Flash Drive)	\$5.00/each
4.	Requests from other cities/towns	No Charge
5.	Requests from other governmental agencies	Reciprocal Basis
6.	To maintain the integrity and security of City records, an hourly fee will be charged for each hour, or fraction of an hour after 30 minutes, for City staff supervision of requester’s inspection of public records.	<p>The fee may not exceed the <u>actual costs</u> directly incident to fulfilling the request in the most cost-efficient and timely manner possible. The fee must be documented.</p> <p>The fee may include the time required to gather public information.</p>
7.	Certified Copies of Public Records	\$2.00/document

**BE IT FURTHER RESOLVED** by the City Commission of the City of Great Falls, Montana, that Resolution No. 9913 is hereby repealed.

**PASSED AND ADOPTED** by the City Commission of the City of Great Falls, Montana, this 21<sup>st</sup> day of June, 2016.

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Bob Kelly, Mayor

ATTEST:

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Lisa Kunz, City Clerk

(Seal of the City)

APPROVED FOR LEGAL CONTENT:

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Sara R. Sexe, City Attorney



CITY CLERK'S OFFICE  
Civic Center Room No. 204  
P.O. BOX 5021  
Great Falls, MT 59403  
Phone Number: 455-8451  
Email: lkunz@greatfallsmt.net

**\* \* REQUEST FOR PUBLIC RECORDS \* \***

REQUESTOR'S NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

INFORMATION REQUESTED: Please describe the **SPECIFIC** information you are requesting and any additional information that will help to locate said records (dates, names, legal description of property, etc.). If there is not enough information provided to process the request, the request may be denied or delayed due to vagueness.

Please indicate if you are requesting: ☐ the records made available to review; ☐ photocopies; if possible, ☐ the requested records scanned and sent electronically to an email address; or ☐ digital media (please indicate below the means by which you prefer the requested information per page 2, item 3).

Depending on the complexity of the request, the City will endeavor to fill requests within 1-10 business days. If the information 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 timeframe for response.

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Is this information intended to be used as a mailing list?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, reason for making request:

Does this request involve litigation? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, Names of Involved Parties: \_\_\_\_\_

Names of Involved Attorneys: \_\_\_\_\_

\_\_\_\_\_

**Resolution 10141 - FEES/CHARGES:**

1	Photocopy charge	\$0.25/page
2	In addition to the photocopy charge set forth above, an hourly fee will be charged for each hour, or fraction of an hour after 30 minutes, of copying/research to fulfill the request (including electronic/non-print records)  Requester shall be provided an estimate of the time it will take to fulfill the request if the public information cannot be readily identified and gathered.	The fee may not exceed the <u>actual costs</u> directly incident to fulfilling the request in the most cost-efficient and timely manner possible. The fee must be documented. The fee may include the time required to gather public information.
3	Copies of records on Digital Media (for example: CD, DVD, Flash Drive)	\$5.00
4	Requests from other cities/towns	No Charge
5	Requests from other governmental agencies	Reciprocal Basis
6	To maintain the integrity and security of City records, an hourly fee will be charged for each hour, or fraction of an hour after 30 minutes, for City staff supervision of requester's examination of public records	The fee may not exceed the <u>actual costs</u> directly incident to fulfilling the request in the most cost-efficient and timely manner possible. The fee must be documented. The fee may include the time required to gather public information.
7	Certified Copies of Public Records	\$2.00/document

Fees will be charged as set forth above and payment is required before release of the requested information. Please indicate if you would like to be notified if the estimate to comply with the request exceeds \$50 - yes ☐ or no ☐.

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Date Received:	Received By:	Forwarded To:	Date Completed:
<u>Fees:</u> Copy Charge for _____ pages @ .25 \$ _____  Other Fees \$ _____  Total \$ _____		Comments:	