RESOLUTION No. 3411

A RESOLUTION ADOPTING 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, 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 Red Lodge, 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.
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 fees, if any, that were charged.
6. Once a request for records has been received, the City has up to ten (10) business days to respond to the applicant either providing the requested records or by requesting clarification from the applicant due to an ambiguous or vague request. Once the City receives a satisfactory record request, the City will provide the records within ten (10) business days. The City reserves the right to extend the

response period in the event the request is voluminous or requires a substantial amount of staff research time.

7. Blank request forms will be available at City Hall and on the City's website.
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.
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 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. Once the department contacts the requester for additional information/clarification, the City may reset the ten (10) day time limit to respond to the request.
10. STAFF shall make copies of City records during regular business hours. For security reasons and to avoid unreasonable disruption of operations, copying facilities will not be available for use by the public.
11. 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 $15.00/hour or fraction of an hour, after 30 minutes of copying service has been provided.
12. 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 thereof, regardless of physical form or characteristics, that has been made or received by a state agency in connection with the transaction of official business and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any agency of the state of Montana. (This applies to the City as a political subdivision of the State of Montana.)

- *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:* Any document prepared for distribution to the Council or Members of the Public at large. NO REQUEST FORM IS REQUIRED for these materials. Examples: City Charter, City Council agendas and schedules, Brochures, Pamphlets, Applications, Blank Bid packets, City Council 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 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 Civil Attorney's Office.

If a department has received a ruling from the City Civil 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 is 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 black and white 8.5x11 copies, $0.50/page for black and white 11x17 copies. An additional $0.05/page will be added for color copies. The hourly rate of $15.00/hour will be charged for each hour, or fraction of an hour, after 30 minutes of copying/research service has been provided.

(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.

Departments may set document fees for specific documents contained in their departments, such as maps, plats, etc. If a department has a fee schedule, it must be posted at City Hall and the City's website.

(4) 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 $15.00/hour will be charged for each hour, or fraction of an hour, after 30 minutes of copying service has been provided.

(5) Copy fees will NOT be charged to other cities requesting materials.

(6) Copies for other governmental agencies or professional organizations will be provided on a "reciprocal" basis; if they charge the City, they will be charged.

(7) The certification charge will be $2.00. (M.C.A. 2-6-103).

(8) Payment for charges must be received before copies are released to the requester.

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 the City of Red Lodge, which 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).

This resolution will become effective April 26, 2016.

PASSED AND APPROVED BY THE RED LODGE CITY COUNCIL ON THIS 26th DAY OF APRIL, 2016.

CITY OF RED LODGE

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Ed Williams, Mayor

ATTEST

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Loni Hanson, City Clerk