

CITY OF AUBREY, TEXAS

PUBLIC INFORMATION COST RECOVERY

ORDINANCE NO. 412-09

AN ORDINANCE OF THE CITY OF AUBREY, TEXAS, REPEALING ORDINANCE NUMBER 396-08 AND ESTABLISHING RULES AND PROCEDURES FOR THE RECOVERY OF CERTAIN COSTS FOR THE PROVISIONS OF PUBLIC INFORMATION; PROVIDING FOR SAVINGS, SEVERABILITY, AND REPEALING CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City of Aubrey, Texas City Council ("City Council") recognizes that public policy requires public access to public information regarding the affairs of government and the official acts of public officials and employees; and

WHEREAS, the Legislature of the State of Texas, the Office of the Attorney General of the State of Texas and the City Council have recognized the need for reasonable cost-recovery rules and procedures related to locating, compiling, manipulating data, and reproducing public information for inspection, duplication, or copying; and

WHEREAS, the City Council has investigated and determined that it would be advantageous and beneficial to the City of Aubrey, Texas ("City") to establish rules and procedures relating to statutorily-limited labor costs, actual Personnel time, and other costs related to locating, compiling, manipulating data, and reproducing public information; and

WHEREAS, Chapter 552 of the Texas Government Code authorizes governmental bodies to establish rules and procedures regulating costs relating to the provision of public information.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUBREY, TEXAS, THAT:

Section 1. Recitals Incorporated

The above-referenced recitals are incorporated herein as if set forth in full for all purposes.

Section 2. Ordinance No. 396-08 Repealed

Ordinance No. 396-08 is hereby repealed in its entirety and shall govern, to the extent applicable, only Public Information Requests received by the City before the effective date of this ordinance.

Section 3. Definitions

The following words and phrases, when used in this ordinance, shall have the meaning ascribed to them by this section or if not defined in this section or other parts of this ordinance shall have that meaning customarily attributed to them.

City means City of Aubrey, Texas.

Labor Charge means the statutorily-limited \$15/hour charge for locating, compiling, manipulating data, and reproducing public information as to all responses to a request for public information that: (a) exceeds 50 pages; (b) requires the provision of documents from two or more separate buildings that are not physically connected with each other; or (c) requires the provision of documents from a remote storage facility.

Nonstandard Copy or Oversized Copy means any copy of public information that is made available to a Requestor in any format other than a Standard Paper Copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM are examples of Nonstandard Copies. Paper copies larger than 8 ½ by 14 inches (legal size) are also considered Nonstandard Copies.

Overhead Charge means a charge that covers such costs as depreciation of capital asset, rent, maintenance and repair, utilities, and administrative overhead. The Overhead Charge shall be computed at 20% of the Labor Charge associated with a particular Public Information Request.

Personnel Charge means the actual cost to the City of Personnel time—to the extent such time exceeds the 36-hour limit under Section 4 of this ordinance—expended for locating, compiling, manipulating data, and reproducing public information associated with a particular Public Information Request, said actual cost being calculated by reducing to an hourly rate an employee's annual salary and the value of all other compensation in the form of benefits received by said employee and multiplying said hourly rate by the time actually spent.

Personnel means City employees.

Program Processing means the execution of a sequence of coded instructions by a computer producing a result.

Programming Labor Charge means a charge for any services of a programmer required in the processing of a Public Information Request while executing an existing program or in creating a new program so that requested information may be accessed and copied.

Public Information Request a/ka "Open Records Request" means a request for public information made in accordance with Texas Government Code, Chapter 552.

Requestor means a person who submits a request to the City for inspection or copies of public information.

Standard Paper Copy means a copy of public information that is a printed impression on one side of a piece of paper that measures up to 8 ½ by 14 inches (legal size). Each side of a piece of paper on which information is recorded is counted as a single copy. A piece of paper that has information recorded on both sides is counted as two copies.

Section 4. Time Limit for Public Information Requests

4.01 Personnel Charges for Time Spent over 36 Hours

Personnel Charges shall apply and be imposed on Requestors for time spent by Personnel in locating, compiling, manipulating data, and reproducing public information for inspection or duplication by a Requestor or providing copies of public information to a Requestor that is in excess of 36 cumulative hours during a 12-month period, said period to correspond with the fiscal year of the City.

4.02 Request by a Minor

In determining whether the time limit established under Section 4.01 above applies, any time spent complying with a request for public information submitted in the name of a minor, as defined by Section 101.003(a), Texas Family Code, is to be included in the calculation of the cumulative amount of time spent complying with a request for public information by a parent, guardian, or other person who has control of the minor under a court order and with whom the minor resides, unless that parent, guardian, or other person establishes that another person submitted that request in the name of the minor.

4.03 Exceptions

This section does not apply if the Requestor is a representative of:

(a) a radio or television station that holds a license issued by the Federal Communications Commission; or

(b) a newspaper that is qualified under Texas Gov't Code Section 2051.044 to publish legal notices or is a free newspaper of general circulation and that is published at least once a week and available and of interest to the general public in connection with the dissemination of news; or is one of the following:

(c) an elected official of the United States, this state, or a political subdivision of this state; or

(d) a representative of a publicly funded legal services organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under Section 501(c)(3) of that code.

Section 5. Statement of Time Spent

Each time the City complies with a request for public information, the City shall provide the Requestor with a written statement of the amount of Personnel time spent complying with that request and the cumulative amount of time spent complying with requests for public information from that Requestor during the applicable 12-month period. (The amount of time spent preparing the written statement is not chargeable and is not included in the amount of time included in the statement provided to the Requestor under this subsection.)

Section 6. Statement of Estimated Costs

6.01 Estimate Required

Before complying with a Public Information Request, the City shall provide a statement of estimated costs if:

- (1) the City intends to impose a Personnel Charge;
- (2) copies made to comply with the request will exceed 50 pages;
- (3) the Public Information Request requires the provision of documents from two or more separate buildings that are not physically connected with each other;
- (4) the Public Information Request requires the provision of documents from a remote storage facility; or
- (5) the estimated charges for complying with a Public Information Request exceed \$40.00.

A statement of estimated costs under this section shall be provided to the Requestor on or before the 10th day after the date on which the public information was requested. If the City does not provide the required statement, it may not collect more than \$40.

6.02 Content of Statement of Estimated Costs

A statement of estimated costs provided under this section must include:

(1) the itemized estimated charges, including any allowable charges for labor, overhead, copies, Personnel time, programming time, etc.;

(2) whether a less costly or no-cost way of viewing the information is available;

(3) a statement that the Requestor must provide the City with a mailing, facsimile transmission, or electronic mail address to receive the itemized statement and that it is the Requestor's choice which type of address to provide; and

(4) a statement that the Requestor must respond in writing by mail, in person, by facsimile or by electronic mail to the City Secretary in response to the statement of estimated costs.

A statement of estimated costs provided under this section must also include as an attachment a copy of the current version of Texas Government Code §552.2615. A copy of §552.2615, current at the time of adoption of this ordinance, is attached hereto as Exhibit A and incorporated herein as if set forth in full.

Section 7. Procedures for Certain Charges and Methodology of Calculations

7.01 Labor Charges

(a) Labor Charges will be applied to any Public Information Request that:

(1) exceeds 50 pages in length;

(2) requires the provision of documents from two or more separate buildings that are not physically connected with each other; or

(3) requires the provision of documents from a remote storage facility.

(b) Labor Charges may not exceed \$15.00/hour.

(c) Labor Charges may not be charged to the Requestor for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:

(1) to determine whether the City will raise any exceptions to disclosure of the requested information under the Texas Government Code, Subchapter C, Chapter 552; or

(2) to research or prepare a request for a ruling by the attorney general's office pursuant to §552.301 of the Texas Government Code.

(d) When confidential information pursuant to a mandatory exception of the Public Information Act is mixed with public information in the same page, a Labor Charge may be recovered for time spent to redact, blackout, or otherwise obscure confidential information in order to release the public information. A Labor Charge shall not be made for redacting confidential information for requests of 50 or fewer pages, unless the request also qualifies for a Labor Charge pursuant to Texas Government Code, §552.261(a)(1) or (2).

(e) Labor Charges may not be imposed to the extent that Personnel Charges are imposed.

7.02 Programming Labor Charges

If a Public Information Request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the City may charge for the programmer's time as a Programming Labor Charge in accordance with state law and rules of the Attorney General.

7.03 Personnel Charges

Personnel Charges are calculated at an hourly rate for time spent by Personnel in locating, compiling, manipulating data, and reproducing public information for inspection or duplication by a Requestor or providing copies of public information to a Requestor that is in excess of 36 cumulative hours in a 12-month period, said period to correspond with the fiscal year of the City. When Personnel Charges are applicable, the charge is calculated by determining the sum total of the actual cost of all employees' time spent on a Public Information Request. Whenever Personnel Charges are imposed, Labor Charges may not be imposed.

7.04 Overhead Charge

(a) An Overhead Charge refers to a standard charge established in order to recover costs associated with the following:

- (1) depreciation of capital assets;
- (2) rent;
- (3) maintenance and repair;
- (4) utilities; and/or
- (5) administrative costs.

(b) The methodology for computing an Overhead Charge is to multiply 20% of any Labor Charges, Programming Labor Charges or Personnel Charges, associated with any given Public Information Request.

(c) An Overhead Charge shall not be made for requests for copies of 50 or fewer pages of Standard Paper Copies unless the request also qualifies for a Labor Charge pursuant to Texas Government Code, §552.261(a)(1) or (2).

Section 8. Charges for copies, Nonstandard Copies and other materials

In addition to charging \$.10 per paper copy for standard copies, the following charges shall apply with regard to all Public Information Requests:

(1) Nonstandard Copies

- (i) Diskette - \$1.00;
- (ii) Magnetic tape – Actual Cost;
- (iii) Data cartridge – Actual Cost;
- (iv) Tape cartridge – Actual Cost;
- (v) Rewritable CD (CD-RW) - \$1.00;
- (vi) Non-rewritable CD (CD-R) - \$1.00;
- (vii) Digital video disc (DVD) - \$3.00;
- (viii) JAZ drive - Actual Cost;
- (ix) Other electronic media – Actual Cost;
- (x) VHS video cassette - \$2.50;
- (xi) Audio cassette - \$1.00;
- (xii) Oversized Copy (e.g., 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper) - \$.50; and/or
- (xiii) Specialty paper – Actual Cost.

Charges for Nonstandard Copies or Oversized Copies are applicable to all Public Information Requests, regardless of the number of pages or the time involved in the response to the Public Information Request.

(2) Microfiche and microfilm charge:

(i) If the City already has information that exists on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy must not exceed the cost of its reproduction. If no copies of the requested microfiche or microfilm are available and the information on the microfiche or microfilm can be released in its entirety, the City may make a copy of the microfiche or microfilm. The charge for a copy shall not exceed the cost of its reproduction.

(ii) If only a master copy of information in microfilm is maintained, the charge is \$.10 per page for Standard Paper Copies, plus any applicable Labor and Overhead Charge for more than 50 copies.

(3) Remote document retrieval – if the City has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver, and return to storage the needed record(s), no additional Labor Charge shall be factored in for time spent locating documents at the storage location by the private company's personnel. If after delivery to the City, the materials must still be searched for records that are responsive to the request, the City may charge for such search in accordance with this ordinance.

(4) Computer resource charge:

(i) mainframe--\$10 per CPU minute;

(ii) Midsize--\$1.50 per CPU minute;

(iii) Client/Server system--\$2.20 per clock hour; and

(iv) PC or LAN--\$1.00 per clock hour.

(5) Miscellaneous supplies. The Actual Cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information, may be added to the total charge for public information.

(6) Postal and shipping charges. The City may add any related postal or shipping expenses that are necessary to transmit the reproduced information to the requesting party.

(7) Miscellaneous charges. If the City accepts payment by credit card for copies of public information and is charged a "transaction fee" by the credit card company, the City may recover that fee from the Requestor.

Section 9. Implementation

The City Secretary, or a person designated by the City Secretary, shall implement the provisions of this ordinance.

Section 10. Savings, Severability and Repealing Clauses

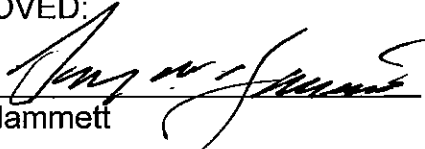
All ordinances of the City in conflict with the provisions of this ordinance are repealed to the extent of that conflict. If any provision of this ordinance shall be held to be invalid or unconstitutional, the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof. The City declares that it would have passed this ordinance, and each section, subsection, clause, or phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause, and phrase be declared unconstitutional or invalid.

Section 11. Publication of the Caption Hereof and Effective Date

This ordinance shall be in full force and effective from and after its passage and upon the posting and/or publication, if required by law, of its caption and the City Secretary is hereby directed to implement such posting and/or publication.

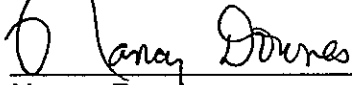
PASSED AND APPROVED by the City Council of the City of Aubrey, Texas this the 20th day of January, 2009.

APPROVED:



Gary Hammett
Mayor

ATTEST:



Nancy Downes
City Secretary

