



RESOLUTION NO. 2017-256

A RESOLUTION REPEALING RESOLUTION NO. 2008-93 AND INCORPORATING CHANGES REGARDING PUBLIC RECORDS REQUESTS IN OREGON STATE LAW ORS 192 EFFECTIVE JANUARY 1, 2018

RECITALS:

WHEREAS, the City of Carlton approved Resolution No. 2008-93 adopting reasonable measures to ensure the integrity of its records and effectiveness of its office operations through a written procedure and fee schedule for public information requests on May 12, 2008; and,

WHEREAS, the Oregon State Legislature approved Senate Bill 481 in July 2017, to take effect January 1, 2018; and,

WHEREAS, Senate Bill 481 modifies the Oregon Public Records Law in the Oregon Revised Statutes (ORS) 192.410 to 192.440. This bill amends the following:

- A. Requirement for a written records request policy by providing a written response to requests within at least five days with at least one of the following responses:
 - 1) Confirm that the public body is the custodian of the requested record;
 - 2) Inform the requester that the public body is not the custodian of the requested record; or
 - 3) Notify the requestor that the public body is uncertain whether the public body is the custodian of the requested record.

- B. Provides further definition for the timeframe to respond to public records requests as described in ORS 192.440 as soon as practicable and without unreasonable delay.
 - 1) A public body's response to a public records request is complete when the public body:
 - a) Provides access to or copies of all requested records within the possession or custody of the public body that the public body does not assert are exempt from public disclosure, or explains where the records are already publicly available;
 - b) Asserts any exemptions from disclosure that the public body believes apply to any requested records and, if the public body cites ORS 192.502 (8) or (9), identifies the state or federal law that the public body relied on in asserting the exemptions;
 - c) Complies with ORS 192.505;
 - d) To the extent that the public body is not the custodian of records that have been requested, provides a written statement to that effect;
 - e) To the extent that state or federal law prohibits the public body from acknowledging whether or a requested record exists would result in loss of federal benefits or imposition of another sanction, provides a written statement to that effect, citing the state or federal law that the public body relies on, unless the written statement itself would violate state or federal law; and
 - f) If the public body asserts that one or more requested records are exempt from public disclosure, includes a statement that the requester may seek review of the public body's determination pursuant to ORS 192.450, 192.460, 192.470, 192.480 and 192.490.

- C. As soon as reasonably possible, but no later than 10 business days after the date by which a public body is required to acknowledge receipt of the request under ORS 192.440, a public body shall:
- 1) Complete its response to the public records request; or
 - 2) Provide a written statement that the public body is still processing the request and a reasonable estimated date by which the public body expects to complete its response based on the current information available.

THE CITY OF CARLTON RESOLVES AS FOLLOWS:

1. Repeal Resolution No. 2008-93.
2. Adopt a Public Records Request Policy for the City of Carlton as stated in Exhibit A, which is incorporated in full by this reference.
3. This resolution will take effect on January 1, 2018 when the state law ORS 192 go into effect.

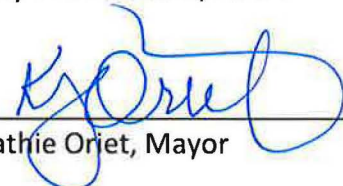
ADOPTED by the City Council of the City of Carlton, Oregon, on the 5th day of December, 2017 by the following votes:

AYES: 6

NAYES: 0

ABSENT: 1 [Rhoads] **ABSTAIN:** 0

APPROVED and signed by the Mayor this 5th day of December, 2017.



Kathie Oriet, Mayor

ATTEST:



Jennifer L. Nelson, City Recorder

**CITY OF CARLTON, OREGON
EXHIBIT A TO RESOLUTION NO. 2017-256
PUBLIC RECORDS REQUEST POLICY**

The City of Carlton desires to adopt a policy addressing the procedure for records requests to comply with the Oregon Public Records Law, ORS 192.410-505. Exempt records will be determined by the City Attorney.

Section 1. Right to Inspect Public Records. ORS 192.420 gives every person the right to inspect any non-exempt public record held by a public body. Requests for such City records must be made under the Oregon Public Records Law and in accordance with this policy. The City shall permit inspection and examination of its non-exempt public records during regular business hours in the City offices, or such other location as the City may reasonably designate from time to time.

Section 2. Written Requests. All requests to inspect a public record must be submitted in writing, either on paper or in electronic format [ORS 192.440 (1)].

Section 3. Levels of Requests and Staff Response. The purpose of this policy is to help provide accurate records to the public in a reasonable time. In order to accommodate the purpose of this policy, levels of requests have been established.

Level 1 Request.

Requested records must be current and accessible, require no duplication, are not subject to the Public Records Fee Schedule specified in Section 7 A, and must require no additional staff time or resources to be made available.

Level 2 Request.

Requested records are not accessible, but can be made accessible with no more than 30 minutes of staff time. Level 2 requests can be made to the public records officer for departments as specified in Section 4 C. Requested records must be located in a single department and readily accessible. Records requiring attorney review are Level 3 records.

Level 3 Request. This type of request is complex, involves multiple staff or departments, or requires more than 30 minutes of staff time. It may involve extensive research or compilation of records. Any requests requiring legal review fall under this section.

Section 4. Procedures.

- A. Requests for public records must include: name, address, sufficient contact information, date of the request, and detailed description of the requested records including year of creation or range of dates. If electronic records are requested, keywords must be sufficient to locate the requested records.
- B. Written requests for inspection or copies of city records must be submitted, on the City's form, to one of the following or designees for processing: the City Recorder for general City records, the police records custodian for police records, the court administrator for court records or designees. If the

City needs additional information or clarification, staff will contact the requestor.

- C. The City shall not create any new documents or customize any existing documents in response to a records request. If the public record is maintained in machine readable or electronic form, staff shall provide copies of the public record in the form requested, if available. If the record is not available in the form requested, it shall be made available in the form in which it is maintained.
- D. Providing nonexempt records is a governmental activity covered by the Americans with Disabilities Act (ADA). The City will provide an opportunity for any requestor disabled within the definition of the Americans with Disabilities Act (ADA) to request an alternate form.
- E. A staff member must review the requested document to make sure the record does not contain any exempt information before releasing the public record for inspection. If a document does contain exempt information, a copy, in lieu of the original, will be provided for inspection with the exempt portion redacted.
- F. Except as otherwise provided by these rules, public records will not be released for inspection or copies provided to the requestor unless the City receives payment of the required estimated fee from the requesting party.
- G. If the City is unable to comply with a request, a written response explaining why the City is unable to process the request will be sent to the requesting party.

Section 5. City Response. The City shall follow timelines as required under ORS 192.

- A. Within five business days the City will acknowledge all records requests to:
 - 1) Confirm the City is the custodian of the requested record;
 - 2) Inform the requester the City does not possess or is not the custodian of the requested record;
 - 3) Notify the requester the City is uncertain whether the City is the custodian of the requested record.
- B. As soon as soon as practical without reasonable delay, but not later than 10 business days after the date by which a public body is required to acknowledge receipt of the request under ORS 192.440, the City shall:
 - 1) Complete its response to the public records request; or
 - 2) Provide a written statement that the City is still processing the request and a reasonable estimated date by which City staff expects to complete its response based on the information currently available.

Section 6. Appeal. A person who has submitted a written public records request in compliance with City policy may seek review of the following, in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505:

- A. The failure of a public body to provide the response required by ORS 192 within the prescribed period. A failure of the public body to timely respond shall be treated as a denial of the request unless the public body demonstrates that compliance was not required.

- B. An estimate of time provided by a public body if the person believes that the estimated timeframe for the response is unreasonably long and will result in undue delay of disclosure.
- C. Any other instance in which the person believes that the public body has failed to comply with ORS 192.
- D. The district attorney and the court have the same authority with respect to petitions under this section as when inspection of a public record is denied.

Section 7. Fees.

A. Public Records Fee Schedule. In order to recover its costs for responding to public records requests, the following fee schedule is adopted:

1) **Research Fees.** These fees are in addition to any copy, shipping, and handling fees with a minimum charge for one half hour. When research is less than 30 minutes, research fees may be waived.

- a. General records research \$25.00/hour
- b. Specialized staff research \$40.00/hour
- c. City Attorney research \$165.00/hour

2) **Paper Copies and Prints.** Fees noted are per page and in addition to research fees. For two-sided copies, fees are double those shown.

	<u>Black and White</u>	<u>Color</u>
a. Letter size (8.5"x11")	\$0.25/page	\$0.65/page
b. Legal size (8.5"x14")	\$0.50/page	\$1.15/page
c. Tabloid size (11"x17")	\$1.00/page	\$1.50/page
d. City Code or Comprehensive Plan		\$20.00/each
e. Bound Documents (i.e. Water Master Plan, Public Works Standards, Budget or Audit)		Actual Cost
f. Copies by third party		Actual Cost
g. City Zoning Maps (11"x17"), color		\$6.00/each
h. Maps and Other Nonstandard size documents		Actual Cost

3) **Electronic copies.** Fees noted are in addition to research fees. Two-sided originals count as two pages.

- a. Electronic documents or file copied to CD or DVD \$15.00/disk
- b. Electronic documents sent by email, FTP, or loaded to requester provided compatible media
 - i. Less than 10 MB and 10 files no additional cost
 - ii. 10MB, 10 files, or greater \$15.00
(i.e. Municipal Code, Comprehensive Plan, Public Works Design Standards, Development Code, etc.)
- c. Paper copies scanned to PDF format, up to 11"x17" \$0.25/page
- d. Larger documents scanned to PDF Actual Cost

- 4) **Other charges**
 - a. Faxes - outgoing \$0.50/page
- 5) **Shipping and Handling.** Actual cost
- 6) **Specific Records.**
 - a. Police Report \$15.00/each
 - b. Police Background Investigation
 - i. General \$15.00/each
 - ii. Non-profit \$10.00/each
 - c. Towed Vehicle Administration \$100.00

7) **Additional Charges.** If a request is of such magnitude and nature that compliance would disrupt the City's normal operations, the City may impose such additional charges as are necessary to reimburse the City for its actual costs of producing records.

B. Cost Estimates. Once receipt of a public records request has been acknowledged, staff will prepare a cost estimate reflecting the cost of City staff time and materials required to make the records available. Cost estimate will include costs of locating, researching, inspecting, summarizing, deleting exempt material, compiling, or copying the public records request. The City will require a deposit in the full amount of the estimated costs before expending additional City resources on the request. City staff will begin work on the request only upon receipt of the deposit. If the actual cost of completing the request exceeds the estimate, the City will not release records until the City's actual costs are received in full. If the actual cost of responding to the request is less than the estimated cost, then the balance of the deposit will be refunded promptly. The payment will be in the form generally accepted for City purchases.

C. Fee Waivers or Reduction. A person requesting a waiver of charges shall file a written request to include the requestor's name, address, basis for the request and whether the requestor can demonstrate benefit to the general public. The City Recorder will review the waiver request and consider the requester's ability to pay and any financial hardship on the City that might arise from granting the waiver.

- 1) Copies of public records may be furnished without cost or at a substantial reduction if the City Recorder determines the waiver is in the public interest because making the record available primarily benefits the general public.
- 2) Any requestor disabled within the definition of the Americans with Disabilities Act (ADA) may also apply for a waiver or reduction of fees if any of the cost of complying with the request is due to the requestor's disability.
- 3) Level 1, Level 2, or routine requests by the news media, that are personal to a requestor, or by any Carlton elected official or appointed advisory body member as related to information needed to perform in official capacity will be made available without charge. Any request that is non-routine or at a Level 3 may be charged in accordance with the City's Public Records Fee Schedule described above. The decision of the City Manager or designee on any fee waiver or reduction is final.
- 4) Routine materials are defined as those items already regularly produced during the city's

regular course of business.

Section 8. Inspection of Records.

- A. Inspection of records will occur during regular City business hours, by appointment. All records shall be inspected at the City of Carlton City Hall. A person making a public records request may personally inspect the requested records, but the right to inspect records does not include the right to access file cabinets or the right to disassemble or change the order of records in files or binders. Original records may not leave the custody of the City. A City staff member must be present while any records are inspected to ensure protection of the records. If any person attempts to alter, remove, or destroy any record, the City staff shall immediately terminate review and notify the city attorney.
- B. If the City maintains copyrighted material, the City will permit the person making the request to inspect the copyrighted material, and may allow limited copying of such material if allowed under Federal copyright law. The City may require the requestor to obtain written consent from the copyright holder before allowing copying of such materials.

Section 9. Closing of the Request. Response to a public records request is complete when the City:

- A. Provides access to or copies of all requested records within the possession or custody of the City that are not exempt from public disclosure, or explains where the records are already publicly available;
- B. Asserts any exemptions from disclosure that the City believes apply to any requested records and, if the public body cites ORS 192.502 (8) or (9), identifies the state or federal law that the City relied on in asserting the exemptions;
- C. Complies with ORS 192.505;
 - 1) To the extent that the City is not the custodian of records that have been requested, provides a written statement to that effect;
 - 2) To the extent that state or federal law prohibits the City from acknowledging whether a requested record exists or that acknowledging whether the record exists would result in loss of federal benefits or imposition of another sanction, provides a written statement to that effect, citing the state or federal law that the City relies on, unless the written statement itself would violate state or federal law;
 - 3) If the City asserts that one or more requested records are exempt from public disclosure, includes a statement that the requester may seek review of the City determination pursuant to ORS 192.450, 192.460, 192.470, 192.480 and 192.490.
 - 4) If the requester fails to pay the fee within 60 days of the date on which the City informed the requester of the fee, or fails to pay the fee within 60 days of the date on which the City informed the requester of the denial of the fee waiver, the City shall close the request.
 - 5) If the requester fails to respond within 60 days to a good faith request from the City for information or clarification, the public body shall close the request.