

**A RESOLUTION ADOPTING REASONABLE
MEASURES FOR PUBLIC RECORDS
REQUESTS**)
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RESOLUTION NO. 2019-23

WHEREAS, according to ORS 192.420, every person has the right to inspect any nonexempt public record of the City of Lebanon subject to reasonable procedures; and

WHEREAS, the City of Lebanon recognizes and respects the public's right to public documents and the importance of maintaining orderly files to facilitate public access in an efficient and cost-effective manner; and

WHEREAS, the State Attorney General suggests that public bodies establish protective measures to maintain the integrity of public records or to prevent interference with the duties of the records custodians; and

WHEREAS, the State Attorney General recommends there be a process in which the public has an opportunity to comment on these measures; and

WHEREAS, on June 22, 2017 Governor Kate Brown signed Senate Bill 481 which amends ORS 192.410 and made an effective date for those changes of January 1, 2018; and

WHEREAS, due to the changes in ORS 192.410 the City of Lebanon's Public Records Policy needs to be amended.

NOW, THEREFORE, BE IT RESOLVED by the Lebanon City Council, that:

Section 1: Previous Public Records Requests policies are hereby repealed.

Section 2: The City shall provide proper and reasonable opportunities for inspection and examination of the records during usual business hours if such request does not interfere with the regular discharge of duties.

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.

A. Level 1 Request.

Requested records must be current and readily available, require no duplication, may not be subject to the Public Records Fee Schedule, and must require no additional staff time or resources to be made available.

B. Level 2 Request.

Requested records are not immediately available but can be made available with no more than 30 minutes of staff time. Requested records must be located in a single department, readily accessible and must not require attorney review prior to release.

C. **Level 3 Request.** This type of request is complex, involving multiple staff and/or departments, or requires more than 30 minutes of staff time. It may involve extensive research or compilation of records and may require legal review.

Section 4: All Level 2 and Level 3 requests to inspect or receive a public record shall be in writing with the date, name, address, and signature of the person making the request or sufficient e-mail address for the City to make an appropriate response.

Section 5: The request must contain, if known, a statement of sufficient specificity to determine the nature, content, and probable department in which the record is located.

Section 6: The City shall respond to a person who makes a written request for a public record within five business days. The response will acknowledge receipt of the request and include one of the following:

- A. Confirm that the City is the custodian of the requested record;
- B. Inform the requester that the City is not the custodian of the public record; or
- C. Notify the requester that the City is uncertain whether it is the custodian of the requested record.

Section 7: The City shall not create any new documents or customize any existing documents in response to a records request.

Section 8: If the public record is maintained in a machine readable or electronic form, the City shall provide a copy of the public record in the form requested, if available. If the public record is not available in the form requested, the City shall make the public record available in the form in which it is maintained.

Section 9: A person making a public record request may personally inspect the requested document during normal business hours. A City staff member shall be present while any original public records are being inspected to insure protection of the documents.

Section 10: Providing nonexempt public records is a governmental activity covered by the Americans with Disabilities Act (ADA). The City will provide an opportunity for individuals with disabilities to request an alternative form.

Section 11: A staff member must review the requested document to make certain 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. The cost of having legal assistance to redact material can be included in the fee charged.

Section 12: Original public documents may not be taken out of the City's custody.

Section 13: City records shall be released only under the conditions that the records are public and not exempt from disclosure under ORS 192.410 – 192.505.

Section 14: No later than 15 business days after the city receives the request it shall complete the request.

- A. Time periods established by ORS 192.440 do not apply to the City if compliance would be impracticable due to:
 - 1. The staff necessary to complete a response to the public records request are unavailable. Staff who are on leave or are not scheduled to work are considered to be unavailable.
 - 2. Compliance would demonstrably impede the City's ability to perform other necessary services.
 - 3. The volume of the public records requests being simultaneously processed by the City.
 - 4. If the City cannot comply with the time periods established by ORS 192.440, it shall as soon as practicable and without reasonable delay, acknowledge a public records request and complete the response to the request.

Section 15: Fees

- A. The City will establish a fee in its annual fee resolution that is reasonably calculated to reimburse the City for the actual cost of making public records available, including locating the requested records, reviewing the records to delete exempt material, supervising a person's inspection of original documents to protect the integrity of the records, summarizing, compiling, or tailoring a record, either in organization or media, to meet the person's request. A request that is extraordinary and would significantly disrupt the regular discharge of duties will be charged whether copies are provided or not. The City may charge for search time even if it fails to locate any records responsive to the request or even if the records located are subsequently determined to be exempt from disclosure. Copies of documents provided by a routine file search will be charged at a copy rate established in the annual fee resolution.
- B. The City may include a fee established to reimburse for the costs of time spent by the city attorney in reviewing the public records, redacting materials from the public record into exempt and nonexempt records. The City fee may also include the cost of time spent by an attorney for the City in determining the application of the provisions of ORS 192.410 - 192.505.
- C. The City may not establish a fee greater than \$25 unless the requestor is provided with written notification of the estimated amount of the fee and the requestor confirms that he/she wants the City to proceed with making the records available.
- D. A 50% deposit be required if the amount of the request is greater than \$100. If the actual charges are less than the prepayment, any overpayment shall be promptly refunded.

- E. If the requester fails to respond within 60 days to a good faith request from the City for information, payment of fees, or clarification, the public body shall close the request.

Section 16: Fee Waivers or Reductions

- A. Copies of public records may be furnished without cost or at a substantial reduction if the City Clerk or designee determines the waiver is in the public interest because making the record available primarily benefits the general public.
- B. The department head will review the waiver or reduction request while also considering the requestor's ability to pay and any financial hardship on the City that might arise from granting the waiver. A three-part analysis will be used to evaluate fee waiver or reduction requests to determine (a) whether a waiver or reduction is prohibited by law, (b) whether the waiver meets the public interest test because making the record available primarily benefits the general public, and (c) whether to grant a fee waiver or reduction.
- C. Copies of routine materials personal to a requestor will be furnished without charge except for police reports. Any non-routine materials requested will be charged at the fee set by City Council resolution.
- D. Copies of routine materials requested by any Lebanon elected official or appointed advisory board will be furnished without charge if the request relates to information needed to act in one's official capacity. Any other materials requested will be charged at the fee set by City Council resolution.
- E. Routine materials are defined as those items already regularly produced.
- F. A person who believes there has been an unreasonable denial of a fee waiver or fee reduction may petition the district attorney.

Section 17: The City will periodically review and make available to the public a written procedure for making public records requests that includes:

- A. A person and address to which public records requests may be sent;
- B. The amounts and the manner of calculating fees that the City charges for responding to requests; and
- C. Any other information that will assist a person seeking public records of the City.

Passed by the Lebanon City Council and executed by the Mayor on this 14th day of August 2019 by a vote of 5 yeas and 0 nays.

CITY OF LEBANON, OREGON



Paul R. Aziz, Mayor
Jason Bolen, Council President

ATTESTED BY:



Kim Scheafer, MMC, City Clerk