

ORDINANCE NO. CO67-07-12-06-3B

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CEDAR PARK, TEXAS, AMENDING CHAPTER 1, GENERAL ADMINISTRATION, OF THE CODE OF ORDINANCES BY ADDING A NEW SECTION ARTICLE 1.11 PUBLIC INFORMATION REQUESTS; IMPOSING A FEE FOR COPIES OF OR ACCESS TO PUBLIC INFORMATION; IMPOSING A FEE FOR COPIES OF OR ACCESS TO MUNICIPAL COURT RECORDS; AMENDING APPENDIX A TO ADD ARTICLE 16, FEES FOR PROVIDING COPIES OF PUBLIC INFORMATION; REPEALING ALL ORDINANCES OR PARTS OF THE ORDINANCES IN CONFLICT HERewith; PROVIDING FOR THE SEVERABILITY OF THE PROVISIONS HEREOF; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Texas Public Information Act, Chapter 552 of the Texas Government Code, gives the right to access government records. All government information is presumed to be available to the public. Certain exceptions may apply to the disclosure of the information. Governmental bodies shall promptly release requested information that is not confidential by law, either constitutional, statutory, or by judicial decision, or information for which an exception to disclosure has not been sought; and

WHEREAS, the Texas Public Information Act, Section 552.001 of the Texas Government Code, et seq., requires that the charges for copies of public information be in an amount that reasonably includes all costs related to reproducing the public information; and

WHEREAS, the Public Information Act authorizes the Texas Attorney General to adopt rules for use by each governmental body in determining the charges for public information; and,

WHEREAS, Section 552.266 of the Texas Government Code provides that the charge for a copy of a municipal court record made by a municipal court clerk shall be the charge provided by ordinance; and

WHEREAS, the City Council of the City of Cedar Park, Texas, finds and determines that the rules promulgated by the Texas Attorney General reasonably include all costs of the City of Cedar Park in reproducing public information and in reproducing municipal court records;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CEDAR PARK, TEXAS:

SECTION 1. That the findings set out in the preamble to this ordinance are hereby in all things approved and adopted as if fully set forth herein.

SECTION 2. That there is hereby adopted to Chapter 1, Article 1.11 of the Code of Ordinances of the City of Cedar Park, Texas, said section to read as follows:

Charge for Public Information.

- a. Each person requesting copies of public information shall pay a fee for such copies, said fee to be calculated in accordance with the rules promulgated by the Texas Attorney General of the State of Texas governing charges for public information, as they exist now and as may be amended. Where appropriate under the rules of the Texas Attorney General and the laws of the State of Texas, as they exist now and as maybe amended, a charge shall also be imposed for access to public information.
- b. The city manager or designee may provide copies of public information or access to public information free of charge or at a reduced charge if it is determined that waiver or reduction of the charge is in the public interest because providing the copy of the information primarily benefits the general public. In addition, the city manager or designee may waive the charge for copies of or access to public information if the cost of processing the collection charge will exceed the amount of the charge.

Requests That Include Large Amounts Of Employee Or Personnel Time.

- a. After personnel of the City of Cedar Park collectively have spent 36 hours of time producing public information for inspection or duplication for a requestor during the City of Cedar Park's 12-month fiscal year (October – September), the City of Cedar Park shall recover from the requestor any costs attributable to any further personnel time spent producing information for inspection or duplication from the requestor.
- b. The charge for personnel costs incurred in processing a request for public information is \$15 per hour. When applicable, the personnel charge will be prorated to recover the cost of personnel time spent complying with requests.

- c. Personnel time will not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:
 - i. To determine whether the City of Cedar Park will raise any exceptions to disclosure of the requested information under Subchapter C of the Public Information Act.
 - ii. To research or prepare a request for a ruling by the attorney general's office pursuant to Subchapter G of the Public Information Act.

SECTION 3. That there is hereby adopted to Chapter 1, Article 1.11 of the Code of Ordinances of the City of Cedar Park, Texas, said section to read as follows:

Charge for Municipal Court Records.

(a) Each person requesting copies of municipal court records shall pay a fee for such copies, said fee to be calculated in accordance with the rules promulgated by the Texas Attorney General of the State of Texas governing charges for public information as they exist now and as may be amended. Where appropriate under the rules of the Texas Attorney General and the laws of the State of Texas as they exist now and as may be amended, a charge shall also be imposed for access to municipal court records.

(b) Notwithstanding subsection (a) of this section, a person shall not be charged for copies of municipal court records requested in conjunction with a municipal court case to which that person is a party. For purposes of this section, a person is a party to a municipal court case if the person is a complainant or defendant in the case or if the person is a representative of a complainant or defendant in the case.

(c) The judge of the municipal court may provide copies of municipal court records or access to municipal court records free of charge or at a reduced charge if it is determined that waiver or reduction of the charge is in the public interest because providing the copy of the information primarily benefits the general public. In addition, the judge may waive the charge for copies of or access to municipal court records if the cost of processing the collection charge will exceed the amount of the charge. Finally, the judge may waive or reduce the charge for copies of or access to municipal court records if it is determined such waiver or reduction is in the interest of justice.

(d) The clerk of the municipal court may waive the charge for copies of or access to municipal court records if the cost of processing the collection charge will exceed the amount of the charge.

SECTION 4: Appendix A: Fees For Providing Copies Of Public Information:
Established by the Texas Administrative Code, Title 1, Part 3 Chapter 70 Rule §70.3

This charges cover the cost of materials onto which information is copied and do not reflect any additional charges that may be associated with a particular request.

(a) The charges in this section to recover costs associated with providing copies of public information are based on estimated average costs to governmental bodies across the state. When actual costs are 25% higher than those used in these rules, governmental bodies other than agencies of the state, may request an exemption in accordance with §111.64 of this title (relating to Requesting an Exemption).

(b) Copy charge.

(1) Standard paper copy. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page.

(2) Nonstandard copy. The charges in this subsection are to cover the materials onto which information is copied and do not reflect any additional charges, including labor, that may be associated with a particular request. The charges for nonstandard copies are:

- (A) Diskette--\$1.00;
- (B) Magnetic tape--actual cost;
- (C) Data cartridge--actual cost;
- (D) Tape cartridge--actual cost;
- (E) Rewritable CD (CD-RW)--\$1.00;
- (F) Non-rewritable CD (CD-R)--\$1.00;
- (G) Digital video disc (DVD)--\$3.00;
- (H) JAZ drive--actual cost;
- (I) Other electronic media--actual cost;
- (J) VHS video cassette--\$2.50;
- (K) Audio cassette--\$1.00;

(L) Oversize paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper--See also §111.69 of this title)--\$.50;

(M) Specialty paper (e.g.: Mylar, blueprint, blue-line, map, photographic--actual cost.

(c) Labor charge for programming. If a particular 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

governmental body may charge for the programmer's time.

(1) The hourly charge for a programmer is \$28.50 an hour, which includes fringe benefits. Only programming services shall be charged at this hourly rate.

(2) Governmental bodies that do not have in-house programming capabilities shall comply with requests in accordance with §552.231 of the Texas Government Code.

(3) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of §552.261(b) of the Texas Government Code.

(d) Labor charge for locating, compiling, and reproducing public information.

(1) The charge for labor costs incurred in processing a request for public information is \$15 an hour, which includes fringe benefits. The labor charge includes the actual time to locate, compile, and reproduce the requested information.

(2) A labor charge shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records, unless the documents to be copied are located in:

(A) Two or more separate buildings that are not physically connected with each other; or

(B) A remote storage facility.

(3) A labor charge shall not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:

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

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

(4) When confidential information pursuant to a mandatory exception of the 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).

(5) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of Texas Government Code, Chapter 552, §552.261(b).

(6) For purposes of paragraph (2)(A) of this subsection, two buildings connected by a covered or open sidewalk, an elevated or underground passageway, or a similar facility, are not considered to be separate buildings.

(e) Overhead charge.

(1) Whenever any labor charge is applicable to a request, a governmental body may include in the charges direct and indirect costs, in addition to the specific labor charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If a governmental body chooses to recover such costs, a charge shall be made in

accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(2) An overhead charge shall not be made for requests for copies of 50 or fewer pages of standard paper records unless the request also qualifies for a labor charge pursuant to Texas Government Code, §552.261(a)(1) or (2).

(3) The overhead charge shall be computed at 20% of the charge made to cover any labor costs associated with a particular request. Example: if one hour of labor is used for a particular request, the formula would be as follows: Labor charge for locating, compiling, and reproducing, $\$15.00 \times .20 = \3.00 ; or Programming labor charge, $\$28.50 \times .20 = \5.70 . If a request requires one hour of labor charge for locating, compiling, and reproducing information ($\$15.00$ per hour); and one hour of programming labor charge ($\$28.50$ per hour), the combined overhead would be: $\$15.00 + \$28.50 = \$43.50 \times .20 = \8.70 .

(f) Microfiche and microfilm charge.

(1) If a governmental body 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 governmental body should make a copy of the microfiche or microfilm. The charge for a copy shall not exceed the cost of its reproduction. The Texas State Library and Archives Commission has the capacity to reproduce microfiche and microfilm for governmental bodies. Governmental bodies that do not have in-house capability to reproduce microfiche or microfilm are encouraged to contact the Texas State Library before having the reproduction made commercially.

(2) If only a master copy of information in microform is maintained, the charge is \$.10 per page for standard size paper copies, plus any applicable labor and overhead charge for more than 50 copies.

(g) Remote document retrieval charge.

(1) Due to limited on-site capacity of storage of documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by governmental bodies to store current records on-site. State agencies are encouraged to store inactive or non-current records with the Texas State Library and Archives Commission. To the extent that the retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services for requests that qualify for labor charges under current law.

(2) If a governmental body 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 governmental body, the boxes must still be searched for records that are responsive to the request, a labor charge is allowed according to subsection (d)(1) of this section.

(h) Computer resource charge.

(1) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(2) These computer resource charges are not intended to substitute for cost recovery methodologies or charges made for purposes other than responding to public information requests.

(3) The charges in this subsection are averages based on a survey of governmental bodies with a broad range of computer capabilities. Each governmental body using this cost recovery charge shall determine which category(ies) of computer system(s) used to fulfill the public information request most closely fits its existing system(s), and set its charge accordingly. Type of System--Rate: Mainframe--\$10 per CPU minute; Midsize--\$1.50 per CPU minute; Client/Server--\$2.20 per clock hour; PC or LAN--\$1.00 per clock hour.

(4) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather, it is solely to recover costs associated with the actual time required by the computer to execute a program. This time, called CPU time, can be read directly from the CPU clock, and most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (d) of this section. No charge should be made for computer print-out time. Example: If a mainframe computer is used, and the processing time is 20 seconds, the charges would be as follows: $\$10 / 3 = \3.33 ; or $\$10 / 60 \times 20 = \3.33 .

(5) A governmental body that does not have in-house computer capabilities shall comply with requests in accordance with the §552.231 of the Texas Government Code.

(i) 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.

(j) Postal and shipping charges. Governmental bodies may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.

(k) Sales tax. Pursuant to Office of the Comptroller of Public Accounts' rules sales tax shall not be added on charges for public information (34 TAC, Part 1, Chapter 3, Subchapter O, §3.341 and §3.342).

(l) The commission shall reevaluate and update these charges as necessary.

SECTION 5. That the provisions of this ordinance are severable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 6. If any provision, section, subsection, sentence, clause or phrase of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Cedar Park, in adopting this ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any portion or provision.

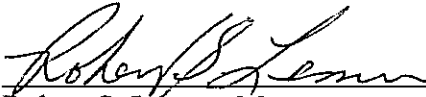
SECTION 7. That this ordinance shall be effective from and after its passage and approval by City Council.

SECTION 8. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time; place and purpose of said meetings were given all as required by law.

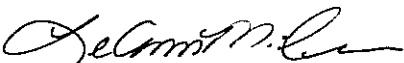
READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Cedar Park at a regular meeting on the 15th day of November, 2007, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

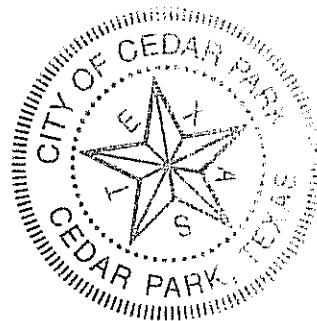
READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Cedar Park at a regular meeting on the 6th day of November, 2007, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

CITY OF CEDAR PARK, TEXAS

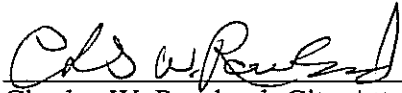

Robert S. Lemon, Mayor

ATTEST:


LeAnn M. Quinn, TRMC
City Secretary



APPROVED AS TO FORM
AND CONTENT:



Charles W. Rowland, City Attorney