

ORDINANCE NO. 10-23-17-A

**AN ORDINANCE ESTABLISHING THE MANNER AND FORM IN WHICH THE
HAMILTON COUNTY RECORDER MAY PROVIDE BULK FORM COPIES
TO A BULK USER**

WITNESS THAT:

WHEREAS, the Indiana Code dealing with County Recorder's sale of documents in bulk to bulk users has recently been amended; and,

WHEREAS, I.C. 36-2-7-10.1 (b) provides that the County Executive shall establish by ordinance the manner and form in which the County Recorder may provide bulk form copies to a bulk user, and the permissible fees the Recorder's Office may charge for this service; and,

WHEREAS, the recent amendment of I.C. 36-2-7-10.1 establishes a presumptive fee of ten cents (\$0.10) per page for a copy of a recorded document. However, this per page cost can be increased up to a maximum of twenty cents (\$0.20) if the County Executive makes a finding and determination that the actual costs incurred by the County Recorder exceed the ten cents (\$0.10) per page presumptive fee; and,

WHEREAS, an analysis of the calendar years 2011 through 2015, a copy of which is attached to this ordinance, shows an average cost per bulk image produced of twenty-one cents (\$0.21), an amount which exceeds the maximum fee allowed to be charged by statute; and,

WHEREAS, it is in the best interests of the County that the County Executive establish a uniform ordinance for the establishment of the manner and form for the provision of bulk form copies to bulk users.

IT IS THEREBY ORDAINED by the Board of Commissioners of Hamilton County, Indiana as follows:

Section I. Definitions.

The following definitions, as established by I.C. 36-2-7-10.1, shall apply throughout this Ordinance:

(a) "Bulk form copy" means an aggregation of:

- (1) copies of all recorded documents received by the Hamilton County Recorder for recording in a calendar day, week, month, or year;
- (2) the indices for finding, retrieving, and viewing all recorded documents received by the Hamilton County Recorder for recording in a calendar day, week, month, or year; or
- (3) both clauses (1) and (2).

(b) “Bulk user” means an individual, a corporation, a partnership, a limited liability company, or an unincorporated association that receives bulk form copies under a contract with the Hamilton County Recorder.

(c) “Copy” means a reproduction, including an image of a recorded document or indices created by:

- (1) Duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage; or
- (2) Reproducing on microfilm.

(d) “Indices” means all of the indexing information used by the Hamilton County Recorder for finding, retrieving, and viewing a recorded document.

(e) “Recorded document” means a writing, a paper, a document, a plat, a map, a survey, or anything else received at any time for recording or filing in the public records maintained by the Hamilton County Recorder or the Recorder’s designee.

Section II. Manner and Form of Production.

It is hereby established that the Hamilton County Recorder shall provide bulk form copies to a bulk user by either providing the copies on a CD-ROM or electronically transmitting the copies using an electronic transfer process.

Section III. Procedure for Requesting Bulk Form Copies.

A bulk user must submit a written request to the Hamilton County Recorder that identifies the requested bulk form copies with reasonable particularity. Unless the request is refused under Section VI, upon receipt of a valid written request the Hamilton County Recorder or the Recorder's designee shall provide the bulk form copies to the bulk user by the method or methods established by Ordinance. The bulk form copies shall be provided within a reasonable time after the later of the following events:

- (1) The Recorder's archival process is completed and bulk form copies become available in the Hamilton County Recorder's Office.
- (2) The bulk form user executes a contract that meets the requirements of Section V with:
 - a. The Hamilton County Recorder; and
 - b. If the Hamilton County Recorder uses a third party to provide bulk copy services, the Recorder's designee.

The Hamilton County Recorder or the Recorder's designee shall work with reasonable diligence to ensure that bulk form copies are timely produced to the bulk user.

Section IV. Fees Charged for Bulk Form Copies.

- (a) Based on a four county cost study dated September 12, 2016 and performed by Maximus for the Indiana Recorder's Association (which is attached hereto and incorporated by reference), the Hamilton County Board of Commissioners finds and determines that the costs incurred by the Hamilton County Recorder's Office of producing bulk form copies (including applying a watermark or other protective feature) substantially exceeds both the standard fee of ten cents (\$0.10) per page or per recorded document established by I.C. 36-2-7-10.1 (d) and the fee hereafter established by this Ordinance. Therefore, the following fee schedule is hereby adopted:

- (1) Twenty cents (\$0.20) per page for a copy of a recorded document, including the instrument's book and page, if applicable.

(2) Twenty cents (\$.20) per recorded document for a copy of the indices used by the Hamilton County Recorder for finding, retrieving, and viewing a recorded document.

(b) The fees charged by the Hamilton County Recorder are subject to the following requirements:

(1) The Hamilton County Recorder shall pay the fees in the Hamilton County Treasury at the end of each calendar month.

(2) The fees prescribed and collected under this section supersede all other fees for bulk form copies required by law to be charged for serviced rendered by the Hamilton County Recorder to bulk users.

(3) All revenue generated by the Hamilton County Recorder under this section shall be deposited in the Recorder's Records Perpetuation Fund and used by the Recorder in accordance with I.C. 36-2-7-10 (f).

(4) The Hamilton County Recorder shall periodically update and verify the cost study referred to in Section IV (a) of this ordinance.

Section V. Bulk User Contract- Termination.

(a) A bulk user must enter into a contract with the Hamilton County Recorder and if the Recorder uses a third party to provide bulk copy services, the Hamilton County Recorder's designee, in order to receive bulk form copies. The contract must be in writing and must require that the bulk user agrees not to do any of the following;

(1) Except as provided in Section VI, provide, transfer, or allow the transfer of any copy of a recorded document obtained by the bulk user under this section to a third party.

(2) Engage in unauthorized access to recorded documents.

(3) Engage in unauthorized alteration of recorded documents.

A contract required under this subsection may not include any restrictions on a bulk form user's use of the bulk form copies other than those contained in this section.

(b) If a bulk user does not comply with a contract, the Hamilton County Recorder may terminate the contract, immediately stop providing bulk form copies to the bulk user, and refuse to provide the bulk form copies required by the bulk user if all termination provisions and procedures in the contract have been met by the Recorder. The Hamilton County Recorder may refuse subsequent requests from a bulk user for bulk form copies in the following circumstances:

(1) The bulk user is a person that has had a previous bulk form copy contract terminated by the Hamilton County Recorder because the Recorder determined that the bulk user failed to comply with the contract.

(2) The bulk user is a corporation or limited liability company in which a person has a majority or controlling interest and:

- a. the person requested bulk form copies under a previous contract with the Hamilton County Recorder; and
- b. The contract was terminated by the Hamilton County Recorder because the Recorder determined that the person failed to comply with the contract.

Section VI. Resale of Bulk Form Copies by Bulk User.

(a) A bulk user that is licensed under I.C. 27-1-15.6-6(d) or holds a certificate of authority under I.C. 27-7-3-6 may provide bulk form copies related to the specific order for a title search (as defined in I.C. 27-7-3-2) when operating as:

(1) A title plant for the issuance of title insurance (as defined in I.C. 27-7-3-2); or

(2) Title company (as defined in I.C. 27-7-3-2).

A bulk user that meets the requirements of this subsection may charge its customers a fee for using the bulk form copies obtained by the bulk user

that may not exceed the costs incurred by the bulk user for obtaining the bulk form copies. A bulk user that meets the requirements of this subsection may not resell, provide, transfer, or allow the transfer of any copy of a recorded document, whether in bulk form or as individual copies or images, to any other bulk user or title plant.

(b) A bulk user that does not meet the requirements of Section VI (a) above is prohibited from selling, offering for sale, advertising for sale, soliciting a purchase of, loaning, giving away, allowing subscription service to, or otherwise transferring, providing, or allowing the transfer of bulk form copies for commercial purposes to a third party, whether the copies are in bulk form or individual copies or images.

Section VII. Enhanced Access Not Affected.

This ordinance does not apply to enhanced access authorized under I.C. 5-14-3-3 and any other Hamilton County ordinances promulgated under authority of that statute.

Section VIII. Effective Date.

This ordinance shall be effective immediately upon passage.

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ALL OF WHICH IS ORDAINED by the Board of Commissioners of Hamilton County, Indiana on this 23rd day of October 2017.

BOARD OF COMMISSIONERS OF
HAMILTON COUNTY, INDIANA

Christine Altman, President
Steven C. Dillinger
Mark Heirbrandt

ATTEST:

Robin M. Mills, Auditor

Approved: 10/23/17