

COMMISSIONERS' ORDINANCE NO. O-05-2025

AN ORDINANCE AMENDING SECTIONS 37.03 AND 37.04 OF THE COVINGTON CODE OF ORDINANCES RELATING TO THE CITY'S OPEN RECORDS POLICY.

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WHEREAS, the Kentucky General Assembly enacted the Open Records Act, KRS 61.870 to KRS 61.884, which establishes a right of access to public records; and

WHEREAS, the Kentucky Open Records Act now only applies to requests from "Residents of the Commonwealth", as defined by KRS 61.870(10);

WHEREAS, the amendments to Sections 37.03-37.04 of City of Covington's Code of Ordinances will bring the City's Open Records Policy in line with the requirements set forth by the Kentucky General Assembly.

NOW THEREFORE,
BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY
OF COVINGTON, KENTON COUNTY, KENTUCKY:

Section 1

Sections §§ 37.03 – 37.04 of the Covington Code of Ordinances are amended to read as follows:

OPEN RECORDS POLICY

§ 37.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMERCIAL PURPOSE. The direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee. **COMMERCIAL PURPOSE** excludes the publication or related use of a public record by a newspaper or periodical; the use of a public record by a radio or television station in its news or other informational programs; or the use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties.

MECHANICAL PROCESS. Any operation or other copying procedure transacted on a machine, including a copier, computer, recorder or tape processor, or other automated device.

MEDIUM PROCESSING. The physical material in or on which records may be stored or copied.

OFFICIAL CUSTODIAN OF RECORDS. The City Clerk is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his or her actual

personal custody and control.

OPEN RECORD. A record, or any part thereof, that does not fall under one or more statutory exemptions authorizing nondisclosure and must therefore be disclosed to the public.

PUBLIC RECORD. All books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency.

RESIDENT OF THE COMMONWEALTH. Means:

(a) An individual residing in the Commonwealth of Kentucky;

(b) A domestic business entity with a location in the Commonwealth of Kentucky;

(c) A foreign business entity registered with the Secretary of State of the Commonwealth of Kentucky;

(d) An individual that is employed and works at a location or locations within the Commonwealth of Kentucky;

(e) An individual or business entity that owns real property within the Commonwealth of Kentucky;

(f) Any individual or business entity that has been authorized to act on behalf of an individual or business entity defined in paragraphs (a) to (e) above;

(g) A news-gathering organization as defined in KRS 189.635(9)(b)1.a. to e.;

(1984 Code, § 37.03) (Ord. O-14-19, passed 6-11-2019; Ord. O-08-22, passed 3-22-2022)

Statutory reference:

Similar provisions, see KRS 61.870(2), (4)(a), (b), (5), (7), (8), **(10)** and 83A.085(3)(b).

§ 37.04 REQUESTING PUBLIC RECORDS.

(A) Open records rules and regulations governing access to the public records of the city, conforming to the provisions of KRS 61.870 to 61.884 shall be posted on the city's website and in a prominent location in all city offices to which the public has access and shall include the mailing address, email, and phone number of the City Clerk or their designee as well as the standardized form developed by the Kentucky Attorney General under KRS 61.876(4).

(B) Open records that are prepared, owned, used, in the possession of or retained by the city, and all public agencies operating under its jurisdiction, including those that are stored offsite or managed and maintained by a private vendor, shall be accessible to ~~the public~~ **Residents of the Commonwealth** by means of onsite inspection, by delivery of copies through the U.S. mail, or, if the length of the document does not exceed 15 pages, by electronic transmission. Delivery of copies by mail is limited to requesters who reside, or have their principal place of business, outside of the county who precisely describe the requested records "which are readily available within the public agency" and who prepay for copies and postage.

(C) No charge may be imposed for onsite inspection of open records and suitable facilities shall be made available for this purpose. The city shall determine whether suitable facilities for onsite inspection of electronic records includes the use of city computers on a case by case basis, focusing on availability (burdensomeness), system security, and the existence of reasonable alternatives.

(D) A reasonable fee, as described in § 37.06, may be imposed for copies of open records, including postage if the copies are mailed to the requester, and prepayment shall be required.

(E) All requests for public records shall be written and signed by the applicant with his or her name printed legibly and transmitted by U.S. mail, facsimile, hand-delivery, or e-mail.

(F) Open records requests shall be directed to the City Clerk or the City Clerk's designee. In the City Clerk's absence, at least one designee shall be authorized to perform all open records duties assigned to the City Clerk to ensure the timely and uniform processing of records requests. Misdirected requests shall be transmitted immediately to the City Clerk or the City Clerk's designee and every city official or employee is responsible for ensuring immediate transmission of all misdirected requests to the City Clerk or the City Clerk's designee.

(G) The City Clerk or the City Clerk's designee shall ensure that open records requests are routed to all public agencies, and officers or employees attached to those agencies, operating under the city's jurisdiction, for the purpose of making "a good faith effort to conduct a search using methods which can reasonably be expected to produce the records requested." Those agencies, and their officers and employees, shall immediately locate, retrieve, and transmit to the City Clerk all responsive records located on public or private premises or devices for review, redaction, and disclosure or nondisclosure based on the records' content. Those agencies, and their officers and employees, shall communicate to the City Clerk or the City Clerk's designee any legally supportable claim of exemption based on the content of the records.

(H) Written requests must contain a description of the records sought, the signature of the requester, a statement of the manner in which the applicant is a Resident of the Commonwealth of Kentucky as defined in § 37.03, and the requester's name printed legibly or typed. A preprinted form is available for the requester's use and convenience on the city's website at <https://www.covingtonky.gov> or by request, but the requester is not required to use the form as a condition of obtaining open records. The City Manager or the City Manager's designee shall have the authority to create an appropriate form for the requestor's use and convenience.

(I) A request to conduct onsite inspection of open records containing a description of the records that is "adequate for a reasonable person to ascertain [its] nature and scope" is legally sufficient. A request that copies of open records be mailed to the requester must contain a "precise description" of the records, and those records must be "readily available". The City Clerk or the City Clerk's designee may communicate with the requester to eliminate any confusion or doubt as to the scope of the request, or to otherwise facilitate access, but shall not ask the requester how the requester intends to use the records or the purpose of the request.

~~[(J) Access to public records shall be granted, or denied, based on the records' content and not on the identity of the requester or the requester's purpose or intended use of the records.]~~

~~[(K)]~~ Public agencies, and officials and employees of public agencies, shall comply with the city's uniform open records policy in accessing public records of the city or public agencies operating under its jurisdiction but shall, pursuant to KRS 61.878(5) enjoy an enhanced right of access to otherwise exempt public records if the public records are necessary in the performance of a legitimate government function or serve a legitimate governmental need. Public agencies, officials or employees who obtain otherwise exempt public records for these purposes shall ensure the records are not publicly disclosed.]

~~[(L)] No requester shall be required to produce proof of identity to inspect, or obtain copies of, open records.]~~

~~[(M)]~~ L No requester shall be permitted to remove original copies of city records from city offices without the written permission of the City Clerk or the City Clerk's designee.

(1984 Code, § 37.04) (Ord. O-14-19, passed 6-11-2019; Ord. O-08-22, passed 3-22-2022)

Statutory reference:

Similar provisions, see KRS 61.872(1), (2), (3), (3)(b), 61.874(3), (4), 61.876(2), 4, 61.878(5).

Section 2

The provisions of this chapter are severable. If any section, clause, sentence, part, or provision of this chapter shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts or provisions of this chapter. It is hereby declared to be the intent of the Board of Commissioners that this chapter would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

Section 3

That this Ordinance shall take effect and be in full force upon its passage, approval, and publication as required by law.

Enacted this 13th day of May, 2025.

ATTEST:


CITY CLERK


MAYOR

Passed: May 13, 2025 (Second Reading)

April 22, 2025 (First Reading)