

CITY OF NEWPORT

RESOLUTION NO. 3781^A
REPEALING RESOLUTION NO. 3348
AND INCORPORATING CHANGES IN OREGON STATE LAW 192
EFFECTIVE JANUARY 1, 2018

WHEREAS, the City of Newport adopted Resolution No. 3348, on February 22, 2005, regarding the city's policy for responding to public records requests; and

WHEREAS, the Oregon State Legislature approved Senate Bill 481 in July 2017 which takes effect on January 1, 2018; and

WHEREAS, Senate Bill 481 modifies the Oregon Public Records Law in the Oregon Revised Statutes (ORS) 192.310 to 192.440. This bill contains 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(s);
 2. Inform the requestor that the public body is not the custodian of the requested record(s); or
 3. Notify the requestor that the public body is uncertain whether the public body is the custodian of the requested record(s).
- 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 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 of the 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 ten (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 NEWPORT RESOLVES AS FOLLOWS:

Section 1. Resolution No. 3348 is repealed in its entirety.


Section 2. The City of Newport policy on public requests requests, as stated in Exhibit A, is incorporated in its entirety by this reference.

Section 3. This resolution will become effective immediately upon adoption.

Adopted by the Newport City Council on January 2, 2018.


Sandra N. Roumagoux, Mayor

ATTEST:


Margaret M. Hawker, City Recorder

RESOLUTION NO. 3781

EXHIBIT A

CITY OF NEWPORT PUBLIC RECORDS REQUEST POLICY

- A. **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.
- B. **Written Requests.** All requests must be made in writing pursuant to ORS 192.440(1).
- C. **Levels of Requests and Staff Response.** The purpose of this policy is to provide accurate records to the public in a reasonable time. To further this purpose, levels of requests have been established as follows:
1. **Level 1 Request.** Requested records must be current and accessible and require no additional resources to be made available. Staff time to compile the records shall not exceed 30 minutes. Examples of these records include lists of business license holders; accident reports readily available to insurance companies from the Police Department; and other similar types of routine records.
 2. **Level 2 Request.** Requested records must be accessible, and require between 30 minutes and one hour of staff time to compile. Requested records must be located in a single department. Level 2 requests shall be made to the City Recorder, or designee, on the city's public records request form.
 3. **Level 3 Request.** This type of request is complex, involves multiple staff and/or departments, or requires more than one hour of staff time. It may involve extensive research or compilation of records. Any requests requiring legal review fall under this section. Level 3 requests shall be made to the City Recorder, or designee, on the city's public records request form.
- D. **Procedures.**
1. Level 1 public records request must be submitted to the department having physical custody of the requested record. Requests may be submitted via mail, e-mail, or telephone. Requests for accident reports may be submitted directly to the Police Department accompanied by the fee and adequate contact information. Requests for business license lists may be submitted directly to the Finance Department accompanied by the fee and adequate contact information.

2. Levels 2 and 3 public records requests must be submitted to the City Recorder, or designee, on the city's public records request form. The requests should be specific and include a detailed description of the requested records. If electronic records are requested, keywords must be sufficient to locate the requested records.
 3. Except as otherwise provided by this policy, requested 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 requestor.
 4. Records provided in response to Level 2 and 3 requests shall be delivered, in duplicate, to the City Recorder or designee, by the department(s) having physical custody of the records. The City Recorder, or designee, shall be responsible for providing the records to the requestor, and will retain the second copy with the original request.
- E. **City Response.** The City Recorder, or designee, shall prepare the response to Level 2 and Level 3 requests in compliance with ORS 192, as follows:
1. Within five (5) business days, the City Recorder, or designee, shall acknowledge all public records requests.
 2. As soon as reasonably practicable, but not later than ten (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:
 - a. Complete its response to the public records request; or
 - b. Provide a written statement that the city is still processing the request with a reasonable estimated by which city staff expect to complete its response based on the information currently available.
- F. **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:
1. The failure of the city to provide the response required by ORS 192 within the prescribed period shall be treated as a denial of the request unless the city demonstrates that compliance was not required.
 2. An estimate of time provided by the city that is considered by the requestor to be unreasonably long and result in undue delay of disclosure.
 3. Any other instance in which the requestor believes that the city has failed to comply with ORS 192.

4. The district attorney and the court have the same authority with respect to petitions.

G. Fees.

1. Fees for public records requests are set annually, by resolution, through the master fee schedule which is updated through the annual budget process.
2. Once receipt of a public records request has been acknowledged, staff will prepare a cost estimate reflecting the cost of city staff time, including a pro-rata share of staff benefits, and materials required to make the records available. The cost estimate will include the costs of researching, summarizing, and compiling the information. The city requires a deposit in the full amount of the estimated costs before expending additional city resources on the request. The exception is if the estimated cost to provide the records does not exceed \$20.00, the requestor may pay the costs when the records are made available by the city. If the actual cost of completing the request exceeds the estimate, the city will not release the records until the actual costs are paid in full. If the actual cost of responding to the request is less than the estimated cost, the balance of the requestor's deposit will be promptly refunded.
3. A person may request a waiver or reduction of the fees by filing a written request which includes the requestor's name, address, basis for the request, and whether the requestor can demonstrate benefit to the general public. The city may consider the requestor's ability to pay and any financial hardship on the city that would arise from granting the waiver. Any requestor disabled within the definition of the Americans with Disabilities Act may also apply for a waiver or reduction of fees if any of the costs of complying with the request is due to the requestor's disability. Level 1 or Level 2 requests, by the news media, will be made available without charge. Level 3 requests, by the news media, may be charged in accordance with the city's master fee schedule. Any requests made by any legal counsel, representing the city, will be provided without charge. The decision of the City Manager, or designee, on any fee waiver or reduction is final.

H. Inspection of Records.

1. Inspection of records will occur during regular city business hours, by appointment. All records shall be inspected at City of Newport facilities. A requestor may personally inspect the requested records, but the right to inspect records does not include the right to access file cabinets, or other records storage areas, or the right to disassemble or change the order of records in files. Original records may not leave the custody of the city. A staff member

must be present while any records are inspected to ensure protection of the records.

2. 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 these materials.

I. Closing of the Request.

1. Response to the 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 city 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;
 - d. To the extent that the city is not the custodian of the records that have been requested, provides a written statement to that effect;
 - e. To the extent that state or federal law prohibits the city from acknowledging whether 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 city relied on, unless the written statement itself would violate state or federal law;
 - f. If the city asserts that one or more requested records are exempt from public disclosure, includes a statement that the requestor may seek review of the city determination pursuant to ORS 192.450, 192.460, 192.470, 192.480, and 192.490.