

**Meeting Date:** 4/8/2014

**Report Type:** Staff/Discussion

**Report ID:** 2014-00254

**Title:** City Council Confidentiality Policy

**Location:** Citywide

**Recommendation:** Pass a Resolution approving the City Council Confidentiality Policy and repeal Resolution No. 2010-108.

**Contact:** James Sanchez, City Attorney, (916) 808-5346, Office of the City Attorney

**Presenter:** None

**Department:** City Attorney

**Division:** City Attorney

**Dept ID:** 03001011

**Attachments:**

- 1-Description/Analysis
- 2-Resolution City Council Confidentiality Policy
- 3-Ex A City Council Confidentiality Policy
- 4-Ex A Redline City Council Confidentiality Policy

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**City Attorney Review**

Approved as to Form  
Sandra Talbott  
4/1/2014 9:32:53 AM

**Approvals/Acknowledgements**

Department Director or Designee: Sandra Talbott - 3/27/2014 3:40:42 PM

## Description/Analysis

**Issue Detail:** The Council directed the City Attorney's Office to amend the City Council Confidentiality Policy to provide a process for councilmembers to request a waiver of confidentiality obligation; and to clearly state the competing public interest in protecting elected official freedom of expression and protecting the position of the city and its resources. This resolution will supersede previous Resolution No. 2010-108.

**Policy Considerations:** The City Council passed Resolution No. 2010-108 approving a City Council Confidentiality Policy on February 23, 2010. This resolution will supersede previous Resolution No. 2010-108.

**Economic Impacts:** None.

**Environmental Considerations:** None

**Sustainability:** Not applicable.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** The proposed changes update direction from Council on March 11, 2014.

**Financial Considerations:** Not applicable.

**Local Business Enterprise (LBE):** Not applicable.

## **RESOLUTION NO.**

Adopted by the Sacramento City Council

April 8, 2014

### **APPROVING CITY COUNCIL CONFIDENTIALITY POLICY**

#### **BACKGROUND**

- A. Over the past several years confidential information shared with the City Council in closed sessions or in attorney-client privileged legal opinions has been disclosed to unauthorized persons without the permission of the City Council.
- B. As a result, a City Council Confidentiality Policy was adopted by the City Council on February 23, 2010 in order to deter unauthorized disclosures of confidential information. This policy was designed to define what information provided by the City Attorney may not be disclosed without approval of the Council, and what remedies are available in the event of an unauthorized disclosure by a Councilmember.
- C. At the request of the City Council, the City Attorney has revised the City Council Confidentiality Policy to address concerns regarding recent disclosure of confidential attorney-client privileged information.
- D. This policy includes a process to request waiver of confidentiality and states that the rights of the councilmembers must be balanced with the interests of the government in promoting efficiencies and protecting public resources.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The Resolution 2010-108 is repealed.
- Section 2. The City Council Confidentiality Policy is adopted.
- Section 3. Exhibit A is a part of this Resolution

#### **Table of Contents**

Exhibit A City Council Confidentiality Policy

**EXHIBIT A****CITY COUNCIL CONFIDENTIALITY POLICY****April 8, 2014****A. Background**

The City Council as a body is the holder of the attorney-client privilege for the City of Sacramento, even as to those attorney-client privileged legal opinions that the City Attorney originally issues to the City Manager, other City Officers and Employees, but not to the City Council (See Charter section 10 and State Bar Rules of Professional Conduct, Rules 3-600). While the City Council, acting as a legislative body and client, may choose to waive the attorney-client privilege as to certain communications, individual members of the City Council may not waive the privilege.

The attorney-client privilege and the City Attorney's duty to preserve that privilege exist to serve the purpose of encouraging the City Manager, other City officers and employees to seek legal assistance and to communicate fully and frankly with the City Attorney even as to embarrassing or legally damaging subject matter. The City Attorney requires this information to represent the City of Sacramento effectively and, if necessary, to advise the City to refrain from wrongful conduct.

In order to keep the City Council fully informed about pertinent legal issues that may impact the City Council's decision-making the City Attorney issues confidential legal opinions or conducts closed sessions when authorized to do so by the Brown Act. Unauthorized disclosures of confidential information obtained from City Attorney legal opinions or from closed sessions harm the City and unduly expose public resources. Harm to the City from such breaches of confidentiality ranges from diminution of City staff's willingness to communicate fully and frankly with the City Attorney to unwarranted litigation exposure and significant damages awards against the City.

Public employees enjoy the full protection of the First Amendment. The interests of the public official as a citizen commenting on matters of public concern must be balanced against the interests of the government in promoting the efficiency of the public services it performs.

City Council has requested that this policy be drafted defining what information received from the City Attorney is confidential and the City Council remedy for unauthorized breaches

**B. Prohibitions Against Disclosure**

1. No councilmember in receipt of confidential information shall disclose or cause to be disclosed all or part of any confidential information to any unauthorized person.

2. Any Councilmember disclosing or causing to be disclosed confidential information to any unauthorized person may be subject to public censure by the City Council. Any censure proceeding shall be conducted in accordance with a process established by City Council resolution and shall at a minimum provide that no public censure will occur unless the accused Councilmember has been provided with notice of the accusation and facts underlying such accusation, and an opportunity to be heard.

**C. Process To Request a Waiver of Confidentiality**

1. A councilmember who desires to disclose a confidential communication may only do so by vote of the city council.
2. In order to obtain the waiver of confidentiality from the City Council, the councilmember must make a request of the City Attorney's Office to:
  - a. Review the confidential information and analyze the risks of disclosure in the given matter:
  - b. Determine the forum for discussion and vote of the city council:
  - c. Agendize the matter on behalf of the councilmember.
3. The councilmember must make the request to waive confidentiality to the City Council in the appropriate forum.

**D. Councilmember in Adverse Position to City of Sacramento**

1. No councilmember with a financial interest in litigation involving the city shall make, participate in making, or in any way attempt to use official influence on a decision concerning the litigation.
2. A councilmember must recuse him or herself from discussion or decision making on any matter in which the councilmember is a named party in litigation with a financial interest against the City of Sacramento.
3. No councilmember shall participate in closed session discussion involving a matter when the councilmember is an adverse named party against the City of Sacramento in litigation regarding that matter.

**E. Definitions**

1. "Cause to Be Disclosed" means failure to exercise due care in maintaining the confidentiality of the Confidential Information.
2. "City Attorney" means the person appointed city attorney under Charter section 72, and deputies appointed or legal counsel retained by the City Attorney.
3. "Confidential Information" means:
  - a. Any information within the scope of the closed session provided orally or in writing during a duly authorized closed session (See Gov't. Code Sec.

- 54963); or
  - b. Any oral or written communications by or from the City Attorney, containing the City Attorney's legal opinions, advice, thoughts, mental impressions or conclusions that are given on behalf of the City.
  - c. Confidential Information does not include information that is: required by law to be reported out of closed session; authorized by the City Council to be disclosed; or otherwise authorized to be disclosed under the law.
4. "Unauthorized person" means:
- a. With respect to confidential information communicated during a closed session, any person, other than a Councilmember, not in attendance at the closed session; or
  - b. Any person to whom the oral or written confidential information is not directed or addressed; or
  - c. Any person who has a disqualifying conflict of interest in the subject matter of the confidential information.
  - d. Unauthorized person does not include district directors of City Councilmembers, the Mayor's Chief of Staff, Charter Officers and Department Heads and the staff of Charter Officers and Department Heads, only when such persons have a need to know the confidential information in order to discharge the duties of their positions for the benefit of the City.

## EXHIBIT A

## CITY COUNCIL CONFIDENTIALITY POLICY

~~February 23, 2010~~ April 8, 2014

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- ~~2.~~

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