

RESOLUTION NO. 2010-108

Adopted by the Sacramento City Council

February 23, 2010

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. In order to deter future unauthorized disclosures of confidential information, Councilmembers have requested that the City Attorney 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. The City Attorney has drafted a Confidential Information Policy addressing these issues for adoption by the City Council.

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

- Section 1. The City Council Confidentiality Policy is hereby approved.
- Section 2. Exhibit A is a part of this Resolution

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- Exhibit A City Council Confidentiality Policy

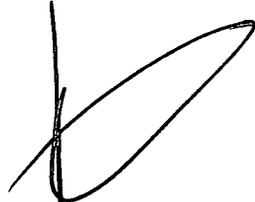
Adopted by the City of Sacramento City Council on February 23, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

EXHIBIT A

CITY COUNCIL CONFIDENTIALITY POLICY

February 23, 2010

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. While the City Council acting as a body 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. 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.

City Council has requested that this policy be drafted defining what information received from the City Attorney is confidential and expressing what recourse the City Council has against members for unauthorized breaches.

B. Prohibitions Against Disclosure

1. No person 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. 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.