

RESOLUTION NO. 2010-107

Adopted by the Sacramento City Council

February 23, 2010

APPROVING CITY ATTORNEY'S LEGAL OPINION POLICY

BACKGROUND

- A. The City Charter sets out certain duties of the City Attorney, in particular to serve as legal counsel to the city government and all officers, departments, boards, commissions and agencies.
- B. A critical duty as legal counsel is the City Attorney's issuance legal opinions directly to the City Council, and issuance of innumerable other legal opinions—formal and informal, written and verbal—to the City's various officers, departments, boards, commissions, agencies and their respective staff members.
- C. In order to assist them in making more informed decisions as councilmembers, several City Councilmembers have expressed an interest in receiving certain of the formal written legal opinions issued by the City Attorney that they typically do not receive.
- D. The City Attorney has prepared the City Attorney's Legal Opinion Policy to define the types of legal opinions that the City Attorney will provide to the City Council and a process for distributing those legal opinions.
- E. The City Attorney's Legal Opinion Policy also establishes criteria and a process enabling the City Attorney to issue non-confidential, public legal opinions increasing transparency of City government.

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

Section 1. The City Attorney's Legal Opinion Policy is hereby approved.

Section 2. Exhibit A is a part of this Resolution

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Exhibit A City Attorney's Legal Opinion 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.

Attest:


Shirley Concolino, City Clerk

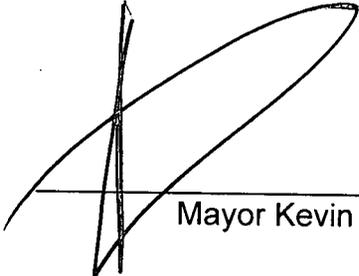

Mayor Kevin Johnson

Exhibit A

City Attorney Legal Opinion Policy

February 23, 2010

Purpose: To provide clear direction regarding the City Attorney's issuance of formal written legal opinions to the Sacramento City Council in order to facilitate more informed decision-making and discharge of duties by the City Council, and regarding the City Attorney's issuance of non-confidential, public legal opinions.

Scope: This policy addresses the criteria and methodologies for issuance of formal confidential written legal opinions to the Sacramento City Council and formal written non-confidential legal opinions intended for use by the public.

Applicability: This policy applies only to formal written legal opinions issued by or at the direction of the City Attorney.

Caveat: This policy is meant to augment, but not supplant the duties of the City Manager, and other City officers and employees to provide current, accurate and complete information about significant issues to the City Council.

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. With limited exceptions, the City Council is entitled to see all City Attorney legal opinions.

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.

Given the complex maze of laws and regulations applicable to the various City functions, it is essential that the City Council, officers and employees come to the City Attorney in order to determine what is deemed to be legal and correct. The City Attorney provides innumerable formal and informal written and verbal confidential legal opinions in response to such requests annually, covering a broad range of subjects for the benefit of the City of Sacramento. Some opinions are requested by the City Council, City Manager, other City officers and employees. Other opinions regarding important legal issues for the City are prepared by the City Attorney without any request, in order to fulfill the City Attorney's duties under the City Charter.

Written legal opinions vary in form, from formal memoranda to brief emails. Due to practical considerations, this policy does not encompass the verbal or informal written legal opinions given by the City Attorney's Office. This policy applies only to formal written legal opinions issued by the City Attorney's Office. Formal written opinions are only a portion of the innumerable legal opinions given each day.

For purposes of defining the appropriate distribution of formal written legal opinions, particularly those issued to the City Council, these opinions are categorized as follows and discussed more fully below:

- A. Public Legal Opinions
- B. City Council Legal Opinions
- C. Other Legal Opinions

A. Public

Certain formal written legal opinions may be determined to satisfy public opinion criteria, and thereby be eligible for public dissemination, either by the City Attorney or by the City Council. A typical example would be an opinion interpreting a particular section of the City Code. Before public issuance, a public legal opinion will bear a statement by and the signature of the City Attorney declaring that the City Attorney or the City Council, as the case may be, has determined the opinion satisfies all of the public opinion criteria, and the legal opinion is thereby made public.

Criteria

- Public interest high; and
- Minimal risk of litigation against or harm to City.

Distribution

- Electronic or paper copies of such opinions will be provided immediately to the City Council and Charter Officers.
- To the extent feasible these opinions will be published on the City Attorney's website at www.cityofsacramento.org/cityattorney.

B. City Council

Criteria

Formal written legal opinions that the City Attorney determines satisfy any of the following criteria shall be issued or provided to the City Council:

- The City Council or a City Councilmember has requested preparation of the opinion.

- The City Attorney prepared the opinion for the City Council without a request upon a determination the opinion is regarding a significant issue about which the City Council should be made aware.
- The City Attorney prepared the opinion for the City Manager, other officer or employee, but the City Attorney has determined the legal opinion pertains to a significant issue and should be provided to the City Council. These legal opinions may not have been deemed significant at the time they were prepared, but may be later deemed significant due to an incident or event, change in circumstances, or the City Attorney's acquisition of new facts.
- The City Attorney prepared the opinion for the City Manager, other officer or employee, but because the legal opinion relates to a subject being brought before the City Council or a subcommittee, the City Attorney has determined the legal opinion would assist the Council or subcommittee in its decision-making and should be provided to the City Council.

Distribution

- Paper or electronic copies of such opinions will be provided to all Council members, and other city officers and employees with a need to know.
- Copies provided to City Council members will be individually, distinctively marked.

C. Other

Criteria

Formal written legal opinions that otherwise satisfy the criteria for City Council opinions (See B. above), but that also satisfy any of the following criteria will *not* be issued to the City Council as a regular matter of course.

- Legal opinion regarding a City Code criminal prosecution over which the City Council has no jurisdiction;
- Legal opinions regarding litigation matters (Closed session briefings will provide the City Council with salient information with handouts where essential);
- Legal opinions regarding personnel matters as to specific individuals; or
- Legal opinions that cannot be shared with the City Council or an individual City Council member, due to a conflict of interest, the potential for compromising an on-going investigation, or a legal proscription.

Distribution

Paper or electronic copies of such opinions will be provided to only such city officers and employees with a need to know.