

**Policy 7.4.10 Council Inquiries and Requests for Information and Records**

**POLICY PURPOSE:**

It is the purpose of this policy to establish guidelines and standards regarding City resources and support for Councilmembers. This policy is supplementary to and in no way intended to conflict with the City Charter. For further information on this subject, see:

- City Charter, Section 807
- Code of Ethics and Conduct for Elected Officials (available on the City’s internal Web site or in the Office of the City Clerk)

**POLICY STATEMENT:**

- I. It is recognized that Council’s work cannot be fully conducted at Council meetings. It is also recognized that the City Charter places the responsibility on the City Manager to conduct the day-to-day affairs of the City consistent with established Council policy and does not permit Councilmembers to direct the activities of City staff. The following policies regarding staff assistance are established to comply with the City Charter and meet the needs of Councilmembers (see Code of Conduct and Code of Ethics for additional guidance):
  - A. General. Council communications with City staff should be limited to normal City business hours unless the circumstances warrant otherwise. Responses to Council questions posed outside of normal business hours should be expected no earlier than the next business day. A request for information, records, written work or analysis by City staff with support work of up to one (1) hour will be provided. Requests over one hour must be approved by the Council. The City Manager can authorize a deviation from this policy if he/she determines that the request needs to be filled before the Council next meets.
  - B. Routine Requests for Information and Inquiries.
    1. Councilmembers may contact staff directly for information made readily available to the general public on a regular basis by City staff (e.g., “What are the library’s hours of operation?”) or “How does one reserve a tee time at the golf course?”.
    2. Under these circumstances staff shall treat the Councilmember no differently than they would the general public, and the Councilmember shall not use their elected status to secure preferential treatment. The City Manager does not need to be advised of such contacts.
    3. Assistance in securing single copies of official records will be provided.

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- C. Non-Routine Requests for Readily Available Information. Council may also contact staff directly for easily retrievable information *not routinely requested by the general public* so long as it does not require staff to discuss the issue or express an opinion (e.g., “How many traffic lights are there in the City?” or “Under what circumstances does the City lower its flags to half mast?”). Staff shall inform the City Manager of all such Council contacts, and the City Manager shall determine whether to copy all other Councilmembers the requested information.
  - D. Non-routine Requests Requiring Special Effort. Any Councilmember request or inquiry that requires staff to compile information that is not readily available or easily retrievable and/or that requests staff express an opinion (legal or otherwise) must be directed to the City Manager, or to the City Attorney, as appropriate (e.g., “How many Study Issues completed over the past five years have required 500 or more hours of staff time?” or “What is the logic behind the City’s sign ordinances affecting businesses along El Camino Real?”). The City Manager (or City Attorney as appropriate) shall be responsible for distributing such requests to his/her staff for follow-up. Responses to such requests shall be copied to all Councilmembers, the City Manager, the City Attorney as appropriate, and affected Department Heads. See more in Section II below.
  - E. Questions Regarding Reports to Council. Councilmembers should forward any questions regarding staff “Reports to Council” at least 24 hours in advance of the Council meeting for which that item is agendaized. During Council meetings, any questions from Council having to do with non-agenda items shall be directed to the City Manager for follow-up.
  - F. Meeting Requests. Any Councilmember request for a meeting with staff must be directed to the City Manager or City Attorney, as appropriate. When in doubt about the appropriateness of a communication with staff, Councilmembers shall ask the City Manager for advice.
  - G. Restricted Information. Under certain circumstances, requests for information regarding operations or personnel may be legally restricted. Applicable statutes include: The Peace Officers’ Procedural Bill of Rights (California Government Code Section 3300, et seq.), Confidentiality of Peace Officer Records (California Penal Code Section 832.5-7), and a number of exceptions to the California Public Records Act, defined in Government Code Section 6254. Providing information in response to such requests could violate the law, and might also violate due process rights that have been defined for employees in the State of California. Accordingly, it shall be the policy of the City of Sunnyvale to strictly comply with all applicable legal authorities governing the release of personnel information and records. See more in Section II below.
- II. Section I above addresses councilmembers’ request for information and records of a routine and non-routine nature and primarily addresses records which are available to the general public. Additionally, this Policy will establish Guidelines and Standards

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regarding requests by the Council and individual councilmembers for City records and information which may not be available to the general public. This Policy obligates the City Manager and City Attorney to determine the appropriate labeling of the records or information and is intended for benefit of the City, staff and the community.

### A. Guiding Principles.

1. The Sunnyvale City Charter provides that the Sunnyvale Municipal Government shall be conducted as a “Council-Manager” form of government and requires the Council to deal directly with the officers and employees of the City through the City Manager or City Attorney. The Charter also provides that the City Attorney shall control all legal business and proceedings and, subject to contracting requirements and budget constraints, may employ other attorneys, appraisers and other technical expert services to assist with or take charge of any litigation or matter.
2. The Council has the clear authority under the Charter to conduct an inquiry into the affairs of the City or the conduct of any department or office which the City Council authorizes with at least four (4) votes. An individual councilmember may request a vote of the Council to initiate such an inquiry.
3. While the vast majority, perhaps 95% of public records are available to the general public, some information and records are by law restricted and may not be released to the public. Some public records are maintained on a strictly “need-to-know” basis and may not be released by staff, even to the City Council. Laws governing these records often impose a legal obligation on part of City staff (e.g. personnel records, medical and health records; some tax information; police records) and also may create privileges to that privacy or non-disclosure.
4. This Policy acknowledges that some non-public records may become public records in the future. Some records such as personnel records or medical information may never lose their cloak of privacy, absent the consent by the party who possesses the privilege or protection.
5. The City Charter and principles of governance provide that the City Council can establish rules for the conduct of its business and proceedings and may sanction a person for disorderly or improper conduct at any meeting or for the disclosure or abrogation of any of the rights of the City, staff or its residents as it may be related to the right to privacy and non-disclosure of information and records.

### B. Closed Session Information and Records.

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1. No person shall disclose confidential information that has been acquired by being present in a closed session to a person not entitled to receive it unless the legislative body by affirmative vote authorizes disclosure of that confidential information.
2. This Policy hereby creates a presumption that any information, records or written materials received as part of a closed session are confidential in nature and may not be disclosed without permission of the City Attorney, the City Manager after consultation with the City Attorney, or disclosure is authorized by a majority vote of the City Council. The Council is free to request clarification of this issue while in closed session or independently with the City Attorney.
3. All materials provided as part of a closed session including materials distributed before the closed session and those distributed in the closed session are to be returned to City staff prior to the conclusion of the closed session unless the City Attorney, the City Manager, in consultation with the City Attorney, or a majority vote of the Council authorizes retention of the materials. The authorization to retain materials does not affect the privilege of confidentiality affecting those materials, the information and/or the obligation to not disclose any of said information or materials.

### C. Personnel, Medical Information and Public Safety Records.

1. As a general rule City Council has no authority to review individual employee personnel records and/or medical information, with the exception of the personnel files and nonmedical information relating to the City Attorney or City Manager.
2. Council has a limited privilege to review information which may be necessary in the personnel context as part of labor negotiations. If that that information is received in closed session, Section II.B of this Policy applies.
3. Council may have access to information and records maintained by the public safety department which are accessible public records and non-confidential in nature as determined by the Chief of Public Safety in consultation with the City Attorney.

### D. Attorney-Client and Work-Product Privileged Information and Records.

1. Consistent with City Charter Section 908, while the City Attorney controls all legal business and proceedings of the City subject to contracting and budget constraints, the City Council can review with the City Attorney the handling of any matter, including litigation and shall have the right to

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view contracts authorized by the City Attorney and the negotiation and payment of legal invoices.

2. Council shall exercise this right through either the supervision of individual cases as those matters come before the Council or as part of the City Attorney evaluation process.

### E. Procedure for Access to Information.

1. Litigation/Legal – Any individual councilmember seeking to examine individual contracts, invoices, payments or records involving confidential information or records handled by the City Attorney may request that Council conduct an inquiry as is authorized under Section 807 of the City Charter. If the inquiry arises as part of the evaluation of the City Attorney, the Mayor shall advise the City Attorney in advance of the evaluation proceeding that the Council has voted by at least four affirmative votes to inquire into one or more matters specified in this Policy. The City Attorney shall respond with sufficient information and detail as may be required by the Council.
2. If the request or inquiry is made as part of a public meeting the requesting councilmember shall state the request in the form of a motion. If the motion receives a second, the matter shall be voted on and four votes shall authorize access by the Council. The City Manager and City Attorney are directed to determine in what context the access can occur to maintain any privilege or comply with any obligation imposed on the City by law.
3. If legally permissible, a councilmember may review confidential information directly with the City Manager or City Attorney in a manner which preserves and protects the attorney-client and attorney work-product privileges of the City and is consistent with the time limitations of Section I above.
4. Attempts to access information or records in violation of this policy shall be ruled as “out of order” by the Mayor if the attempt occurs at a public meeting and reported to the Mayor if the violation occurs outside of a public meeting.

### F. Limitations and Exclusions.

1. The Policy is supplementary to and in no way is intended to conflict with the City Charter or to compromise or abrogate the privileges possessed by the City including, but not limited to, the attorney-client privilege, the attorney work-product privilege, the obligations and privileges with respect to personnel records, medical information and records under HIPPA and other laws and regulations. This policy also does not impact

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the City's rights and obligations under the California Public Records Act, Government Code 6254, et seq.

2. Confidential public records shall only be disclosed to staff on a need-to-know basis only as may be determined by the custodian of those records in consultation with the City Attorney.
3. If a confidential record no longer needs to be held as confidential, it shall be considered an accessible public record.

### III. Implementation.

The City Manager shall monitor those provisions of this policy within the City Manager's Charter responsibilities. Disagreement in interpretation shall be resolved by the City Council. The City Manager shall institute administrative policy to implement this policy. At the time a new Councilmember is seated, the Mayor and City Manager should review this policy with him/her.

Annually, the City Manager shall review the resource requirements necessary to support the level of service specified in this policy, and recommend as a part of the proposed budget necessary changes of budget resources.

(Adopted: Council Policy Update, RTC #14-0061 (November 25, 2014))

Lead Department: Office of the City Manager

For reference, see also: 7.4.6 Council Announcements and Speeches.