



Council Meeting: April 8, 2008

SUBJECT: Resolution Authorizing Destruction of Certain Documents Pertaining to Citizen Complaints/Inquiries, Internal Investigations, Applicant Backgrounds for Non-Hires, Officer Involved Vehicle Collisions, Canine Unit Training and Deployment Records, Inactive Carry Concealed Weapon (CCW) Permit Documentation, Mobile Video Recorder Tapes, Communications Tapes, Digital Images and all Other Routine Audio and Video Monitoring Eligible for Destruction

REPORT IN BRIEF

The Department of Public Safety retains files, videos, recordings, records and reports generated by staff during the performance of their duties. For many of these documents, their usefulness is short lived.

The California Government Code Section 34090 and the California Penal Code Section 832.5, (Attachment A) authorizes the destruction of documents that are no longer of value to the Department, upon adoption of a resolution authorizing such destruction.

Staff recommends that Council adopt a resolution authorizing the destruction of documents identified as being of not further use.

BACKGROUND

Many original documents generated by City employees are by definition "official public records" and must be retained according to a very specific set of legal guidelines. The listed materials which are proposed for destruction have been retained for the specified period for public records. Upon review it has been determined that they no longer have value and are being stored unnecessarily. California law authorizes their destruction.

EXISTING POLICY

Public Safety Support Services Sub-Element Policy 4.3C.1-

Provide accurate and efficient document management.

Action Statement 4.3C.1c-

Destroy official records in a timely manner consistent with all laws and ordinances regulating such destruction.

DISCUSSION

The specific records proposed for destruction are:

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Selected Public Safety Department documents relating to Citizen Complaints/Inquiries, Internal Investigations, Applicant Backgrounds for Non-Hires, Officer Involved Vehicle Collisions, Canine Unit Training and Deployment Records, and Inactive CCW Permit Documentation generated on or before January 1, 2003. In addition staff is requesting permission to destroy all digital images created prior to January 1, 2004, all routine audio recordings created prior to January 1, 2004 and routine video monitoring, including mobile video generated on or before January 1, 2007. (Attachment A)

These documents and recordings are considered to have no further usefulness to the Department, and are no longer of value to the City. These documents meet the criteria for destruction under California Government Code 34090 and California Penal Code Section 832.5.

FISCAL IMPACT

None

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center, and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

1. Approve resolution for destruction of specified records and recordings from the Department of Public Safety.
2. Do not approve resolution for destruction of specified records from the Department of Public Safety and thereby continue to retain the records.

RECOMMENDATION

Staff recommends Alternative #1, that Council approve the resolution allowing for the destruction of specified records and recordings from the Department of Public Safety.

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Reviewed by:

Don Johnson, Director, Public Safety
Prepared by: Heather Tannehill, Manager

Approved by:

Amy Chan
City Manager

Attachments

- A. Records Destruction Legislation
- B. Request for Permission to Destroy Public Records
- C. Records Inventory Log
- D. Resolution Approving Destruction of Specified Public Records

Attachment A

Records Destruction Legislation

California Government Code:

34090. Unless otherwise provided by law, with the approval of the legislative body by resolution and the written consent of the city attorney the head of a city department may destroy any city record, document, instrument, book or paper, under his charge, without making a copy thereof, after the same is no longer required.

This section does not authorize the destruction of:

- (a) Records affecting the title to real property or liens thereon.
- (b) Court records.
- (c) Records required to be kept by statute.
- (d) Records less than two years old.
- (e) The minutes, ordinances, or resolutions of the legislative body or of a city board or commission.

This section shall not be construed as limiting or qualifying in any manner the authority provided in Section 34090.5 for the destruction of records, documents, instruments, books and papers in accordance with the procedure therein prescribed.

34090.5. Notwithstanding the provisions of Section 34090, the city officer having custody of public records, documents, instruments, books, and papers, may, without the approval of the legislative body or the written consent of the city attorney, cause to be destroyed any or all of the records, documents, instruments, books, and papers, if all of the following conditions are complied with:

(a) The record, paper, or document is photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data processing system, recorded on optical disk, reproduced on film or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document, or reproduced on film, optical disk, or any other medium in compliance with Section 12168.7 for recording of permanent records or nonpermanent records.

(b) The device used to reproduce the record, paper, or document on film, optical disk, or any other medium is one which accurately and legibly reproduces the original thereof in all details and that does not permit additions, deletions, or changes to the original document images.

(c) The photographs, microphotographs, or other reproductions on

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film, optical disk, or any other medium are made as accessible for public reference as the original records were.

(d) A true copy of archival quality of the film, optical disk, or any other medium reproductions shall be kept in a safe and separate place for security purposes.

However, no page of any record, paper, or document shall be destroyed if any page cannot be reproduced on film with full legibility. Every unreproducible page shall be permanently preserved in a manner that will afford easy reference.

For the purposes of this section, every reproduction shall be deemed to be an original record and a transcript, exemplification, or certified copy of any reproduction shall be deemed to be a transcript, exemplification, or certified copy, as the case may be, of the original.

34090.6. (a) Notwithstanding the provisions of Section 34090, the head of a department of a city or city and county, after one year, may destroy recordings of routine video monitoring, and after 100 days may destroy recordings of telephone and radio communications maintained by the department. This destruction shall be approved by the legislative body and the written consent of the agency attorney shall be obtained. In the event that the recordings are evidence in any claim filed or any pending litigation, they shall be preserved until pending litigation is resolved.

(b) For purposes of this section, "recordings of telephone and radio communications" means the routine daily taping and recording of telephone communications to and from a city, city and county, or department, and all radio communications relating to the operations of the departments.

(c) For purposes of this section, "routine video monitoring" means videotaping by a video or electronic imaging system designed to record the regular and ongoing operations of the departments described in subdivision (a), including mobile in-car video systems, jail observation and monitoring systems, and building security taping systems.

(d) For purposes of this section, "department" includes a public safety communications center operated by the city or city and county.

34090.7. Notwithstanding the provisions of Section 34090, the legislative body of a city may prescribe a procedure whereby duplicates of city records less than two years old may be destroyed if they are no longer required.

For purposes of this section, video recording media, such as videotapes and films, and including recordings of "routine video

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monitoring" pursuant to Section 34090.6, shall be considered duplicate records if the city keeps another record, such as written minutes or an audiotape recording, of the event that is recorded in the video medium. However, a video recording medium shall not be destroyed or erased pursuant to this section for a period of at least 90 days after occurrence of the event recorded thereon.

California Penal Code:

832.5. (a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(2) Each department or agency that employs custodial officers, as defined in Section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of Section 832.7.

(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace or custodial officer's employing

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agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.

(3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.

(2) "Unfounded" means that the investigation clearly established that the allegation is not true.

(3) "Exonerated" means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

Attachment B

REQUEST FOR PERMISSION TO DESTROY PUBLIC RECORDS

I, Don Johnson, Director of Public Safety, declare:

- That I am the Department Head having under my charge the records, instruments, books or paper more specifically described on the attached log.
- That the retention of the described material is no longer required.
- That the material contains no records affecting the title to real property or liens there on.
- That the material does not consist of court records.
- That the material does not consist of records required to be kept by statute.
- That the material contains no records less than two (2) years old.
- That the material contains no recordings less than one (1) year old.
- That the material does not consist of the minutes, ordinances, or resolutions of the City Council of the City of Sunnyvale, or of any City Board or Commission.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: April 8, 2008

Don Johnson
Director
Department of Public Safety

Attachment C

Sunnyvale Department of Public Safety Records Inventory Log

Citizen Complaints/Inquiries: All documents relating to citizen inquiries/complaints which occurred prior to January 1, 2003

Internal Investigations: All documents relating to internal investigations which occurred prior to January 1, 2003

Applicant Backgrounds for Non-Hires: All documents relating to applicant backgrounds for non-hires which were created prior to January 1, 2003.

Officer Involved Vehicle Collisions: All documents relating to officer involved vehicle collisions which occurred prior to January 1, 2003.

Canine Unit Training and Deployment Records: All documents relating to canine unit training and deployment which occurred prior to January 1, 2003.

Inactive CCW Permit Documentation: All CCW permit documentation that has been deemed inactive and was created prior to January 1, 2003.

Department Digital Images: All digital images made during the course of business on or before January 1, 2004.

Department Audio Recordings: All recordings made during the course of business on or before January 1, 2004.

Department Video Recordings: All mobile video recordings, and other video recordings obtained through normal monitoring that were created prior to January 1, 2007.

Attachment D

RESOLUTION NO. 309-08

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SUNNYVALE APPROVING DESTRUCTION OF CERTAIN
RECORDS (DEPARTMENT OF PUBLIC SAFETY)**

WHEREAS, Sections 34090, 34090.5 and 34090.7 of the Government Code authorize the destruction of certain City records under conditions therein provided; and

WHEREAS, the Director of Public Safety has requested the City Council to approve the destruction of records specified in the inventory attached to the Request for Permission to Destroy Public Records and attached hereto as Exhibit "A"; and

WHEREAS, the City Attorney has endorsed the destruction of such records; and

WHEREAS, the City Attorney and the Director of Public Safety have stated with regard to the above-referenced records that none of them:

- (a) affects the title to real property or liens thereon;
- (b) is a court record;
- (c) is a record required to be kept by statute;
- (d) is an ordinance, resolution or the minutes of the City Council or any board or commission of the City of Sunnyvale; or
- (e) is a record less than five years old, or, if less than five years old, that it is a duplicate of a record remaining on file.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT the destruction of the above-referenced records is hereby approved.

Adopted by the City Council at a regular meeting held on April 8, 2008, by the following vote:

AYES: SPITALERI, HOWE, LEE, SWEGLES, HAMILTON, WHITTUM, MOYLAN
NOES: NONE
ABSTAIN: NONE
ABSENT: NONE

ATTEST:

APPROVED:

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City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

The undersigned hereby consents to the destruction of the above-referenced records.

Dated: April _____, 2008

David Kahn, City Attorney

**EXHIBIT "A"
to
RESOLUTION NO. 309-08**

Sunnyvale Department of Public Safety

RECORDS INVENTORY LOG

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