



AGENDA ITEM NO. 2A

COUNCIL MEETING 11/29/12

APPROVED BY

DEPARTMENT DIRECTOR - James C. Sanchez

CITY MANAGER

November 29, 2012

**FROM:** JAMES C. SANCHEZ, City Attorney  
City Attorney's Office

**BY:** FRANCINE M. KANNE, Assistant City Attorney *FK*  
City Attorney's Office

**SUBJECT:** AMENDING CODE OF CONDUCT FOR COUNCIL MEMBERS RESOLUTION 2004-76  
RELATED TO; CONFIDENTIAL COMMUNICATIONS

### RECOMMENDATIONS

Adopt Amendment to Resolution 2004-76, which will require existing and all new employees privy to confidential information to sign a Confidentiality Agreement.

### EXECUTIVE SUMMARY

Pursuant to Council request, the City Attorney's Office submits the attached amendment to Resolution 2004-76, which places additional requirements on those employees who are privy to confidential information (as defined in the proposed amendment) to maintain the confidential nature of such information. The amendment also requires such employees to sign a Confidentiality Agreement.

### BACKGROUND

In July 2012, the City Attorney's Office conducted an investigation of potential violations of the Brown Act, including disclosure of confidential information. Although there was a lack of specific evidence regarding any confidentiality breaches, it was revealed there were inconsistencies in the practices of: (1) maintaining confidential closed session discussions; and (2) the review, filing, and destruction of confidential information. As a result, the City Attorney recommended an amendment to Resolution 2004-76 that will provide additional safeguards for maintaining the confidential nature of attorney-client communications.

### FISCAL IMPACT

Implementation of these new safeguards will require minimal additional costs, save and except those circumstances where the City will need to enforce the Confidentiality Agreement.

### Attachments:

1. Resolution of the Council Amending the established Code of Conduct for Councilmembers as adopted by Resolution 2004-76.
2. Proposed Confidentiality Agreement.

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RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
FRESNO, CALIFORNIA, AMENDING THE ESTABLISHED  
CODE OF CONDUCT FOR COUNCILMEMBERS AS ADOPTED  
BY RESOLUTION 2004-76.

**WHEREAS, on March 9, 2004, Council adopted Resolution 2004-76 establishing the Code of Conduct for Councilmembers; and**

**WHEREAS, the Code of Conduct for Councilmembers provides the framework for day-to-day actions and decision-making by Councilmembers; and**

**WHEREAS, Section B., of the Code of Conduct provides the general requirements for all Councilmembers; and**

**WHEREAS, Council desires to amend Section B., of the Code of Conduct to add the City Attorney's recommendations to implement additional safeguards that will maintain the confidentiality of attorney-client communications and the Attorney-Client Privilege as applied to Councilmembers and their Chiefs of Staff; and**

**WHEREAS, Council desires to amend the Code of Conduct to add the City Attorney's recommendations to maintain the confidentiality of attorney-client communications, including memorandums, Closed Session discussions and information contained in Closed Session binders as applied to Councilmembers and their Chiefs of Staff.**

**NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno that the Code of Conduct of Councilmembers dated March 9, 2004, as adopted by Resolution 2004-76 be amended as follows:**

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval:



1. B. GENERAL REQUIREMENTS FOR ALL COUNCILMEMBERS

All members of the Council, including those serving as President and Acting President, have equal votes. No Councilmember has more power than any other, and all shall be treated with equal respect. Councilmembers shall:

1. Demonstrate honesty and integrity in every action and statement.
2. Comply with both the letter and spirit of the laws and policies affecting the operation of City government.
3. Serve as a model of leadership and civility to the community.
4. Inspire public confidence in City of Fresno government.
5. Work for the City's best interest and not personal interest.
6. Prepare in advance of Council meetings and be familiar with issues on the agenda.
7. Fully participate in Council meetings and other public forums while demonstrating respect, consideration, and courtesy to others.
8. Become familiar with Council Rules of Procedure and this Code of Conduct.
9. Be responsible for the highest standards of respect, civility and honesty in ensuring the effective maintenance of intergovernmental relations.
10. When communicating with representatives of other governmental entities or constituents, indicate, if appropriate, that the views are their own, and may not represent those of the entire Council.

**11. Councilmembers and their designated Chiefs of Staff shall maintain the Confidentiality of Attorney-Client Communications, and any discussions protected by the Attorney-Client Privilege:**

- a. Only the Councilmembers and their designated Chiefs of Staff shall have access to attorney-client confidential communications. Initially, Councilmembers, Chiefs of Staff, and other designees as discussed below, will be required to sign a Confidentiality Agreement, which will address the obligations to maintain the confidentiality of all future attorney-client communications. All new Councilmembers and new Chiefs of Staff will also be required to sign a Confidentiality Agreement.
  - b. Councilmembers, Chiefs of Staff, and other designees discussed below, will be required to sign an Acknowledgement they have received, read, and understand the Brown Act Procedures and responsibilities set forth in the Municipal Law Handbook.
  - c. Councilmembers and Chiefs of Staff will also be required to sign an Acknowledgement they have received, read, and understand the Code of Conduct for Councilmembers, Resolution No. 2004-76, as amended.
12. Maintain the confidentiality of Closed Session discussions and the information contained in the Closed Session binders:
- a. Closed Session binders will only be delivered directly to Councilmembers, or their Chiefs of Staff; the City Manager, Assistant City Manager, or the City Manager's Executive Secretary; the Mayor, the Mayor's Chief of Staff or the Mayor's Executive Secretary. If none of these individuals are available, the Closed Session binders will be maintained in the City Attorney's Office; an email will be sent advising the identified individuals of the need to pick up the binder at the City Attorney's Office.

- b. To maintain the confidentiality of the information contained in the Closed Session binders, the City Manager's executive secretary, Assistant City Manager's executive secretary, the Mayor's Chief of Staff and the Mayor's executive secretary will also be required to sign the Confidentiality Agreement, the acknowledgement regarding the Brown Act Procedures, and the Acknowledgment regarding the Code of Conduct, Resolution No. 2004-76 (as amended) as described in Section 11 a – c above.
- c. Discussions concerning Closed Session items may be conducted between Councilmembers, subject to the Brown Act, and between those individuals to whom "disclosure is reasonably necessary to further the purpose of the legal consultation," i.e. only those on an absolute need-to-know basis. Notwithstanding the above, discussion concerning Closed Session items, as well as review of Closed Session binders, will be strictly limited to those individuals that have signed the Confidentiality Agreement, the Acknowledgement regarding Brown Act Procedures and the Acknowledgement regarding the Code of Conduct described above.

13. Maintain the confidentiality of Attorney-Client Communications and Memorandums:

- a. Attorney-Client memorandums will be distributed in sealed envelopes to designated staff or a designated place. The envelopes may be opened only by the addressee, or by an individual who has signed the Confidentiality Agreement, the Acknowledgement regarding Brown Act Procedures and the Acknowledgement regarding the Code of Conduct described above.

- b. Each Council office will maintain confidential memorandums filed in a locked file cabinet marked "CONFIDENTIAL".
  - c. Only individuals who have signed the Confidentiality Agreement, the Acknowledgment regarding Brown Act procedures and the Acknowledgment regarding the Code of Conduct may file confidential memorandums in locked cabinet.
  - d. After 180 days (or other designated time) of receipt of a confidential attorney-client legal memorandum, the memorandum will be purged/shredded and/or kept in a confidential manner in a locked cabinet.
  - e. Each Councilmember will ensure their office has a shredder or access to a shredder.
  - f. Memorandums delivered in "hard copy" format shall not be scanned and redistributed by email. Any copies made of the memorandums shall be maintained in the same manner as the original.
14. The confidentiality requirements set forth herein shall be construed in conjunction and consistent with the Councilmember Training Orientation Policy.

2. Except as amended herewith, the Code of Conduct of Councilmembers dated March 9, 2004, Resolution No. 2004-76 shall remain in effect.

\* \* \* \* \*

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2012  
Mayor Approval/No Return: \_\_\_\_\_, 2012  
Mayor Veto: \_\_\_\_\_, 2012  
Council Override Vote: \_\_\_\_\_, 2012

YVONNE SPENCE, CMC  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

BY: \_\_\_\_\_  
Francine M. Kanne, Assistant City Attorney

EMC:sn [60421sn/RESO] 11/21/12