

**Public Records Policy and Protocol****6.1.1****PURPOSE**

The purpose of this policy is to affirm the public's right to access public records and to set forth the procedures that will facilitate accessibility of information to members of the public.

**AUTHORITY AND BACKGROUND**

Provisions in this policy were originally adopted as City Council Policy 0-33, entitled "Public Records Policy and Protocol," on January 27, 2004, and revised on March 2, 2010, which policy is repealed by, revised, and incorporated into the Consolidated Open Government and Ethics Resolution. Portions were also adopted by the City Council under Resolution No. 75091 on August 18, 2009, Resolution No. 75140, adopted on October 20, 2009, and Resolution No. 75292 and Resolution No. 75293 on March 2, 2010, and further amended by the adoption of Resolution No. 76496 on December 4, 2012.

**POLICY**

The public's right to access records and information concerning the conduct of the people's business is a fundamental and necessary right. A record shall not be withheld from disclosure unless it is exempt under applicable laws or the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

The California Public Records Act permits local agencies to adopt regulations stating the procedures to be followed when making their records available to the public. The San José City Council desires to affirm the public's right to access City of San José records and to set forth the procedures by which such records will be made available to the public. The City Council is mindful of the constitutional right of privacy afforded to individuals and it is the intent of the City Council to promulgate a process that strikes an appropriate balance between the objectives of open government and the individual's right of privacy.

**ACCESS TO CITY RECORDS****Records Available for Inspection and Copying**

"Records" include any writing containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by the City, regardless of the physical form and characteristics. Records include any recorded and retained documents or communications regarding official City business sent or received by a City official or employee via personal devices not owned by the City or connected to a City computer network. The records do not have to be written but may be in another format that contains information such as video, audio, or digital recording.

"Writing" includes any handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation such as letters, words, pictures, sounds, or symbols, as well as all papers, maps, magnetic or paper tapes, photographic films and prints, texts, social media posts, and electronic mail.

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To qualify as a public record, a writing must contain information relating, in some substantive way, to the conduct of the public's business. Determination of whether a writing is sufficiently related to the conduct of the public's business requires an examination of the content, the context in, or purpose for which the writing was prepared, the audience to whom it was directed, and whether the writing was prepared by an official or employee acting or purporting to act within the scope of employment. Communications that are primarily personal, containing no more than incidental mentions of the agency business, generally will not constitute public records. Any personal information not related to the conduct of public business, or material falling under a statutory exemption, can be redacted from public records that are produced or presented for review. Records that relate solely to union business that are created or kept by employees are not subject to this policy.

**Documents Not in Existence**

If a request for records seeks the production of records or documents that are not in existence at the time the request is made, the City is not obligated to create a document in order to respond to the request.

**Locating and Identifying Records**

Public records are open to inspection at all times during regular City business hours. The City does not maintain a centralized record keeping system, other than certain documents routinely maintained by the Office of the City Clerk. Each of the City's individual Departments maintains and has custody of records and information relating to the responsibilities and work performed by the particular Department.

Information identifying the City's Departments and Department contacts is available on the City's website at [www.sanjoseca.gov](http://www.sanjoseca.gov). Information about City Departments and contacts may also be obtained by contacting the City's Informational Call Center located at City Hall. The telephone number for reaching the Call Center is (408) 535-3500, and the TDD telephone for the hearing impaired is (408) 294-9337.

**Reasonable Effort**

City officials and employees are required to disclose all records they can locate with reasonable effort. This includes searching their own personal files, accounts, and devices for responsive material.

**Verifying No Records Located**

When a City Official or employee, upon making a reasonable effort, finds they have no responsive records, the City Official, or their representative, or the City employee will respond in writing that no records were located.

**Making a Request for Records**

There is no specific form that must be used to request records, nor is there any language that must be used when making a request. Requests may be made orally or in writing, either in person, through the

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mail, via e-mail or over the telephone. The request, however, should contain a reasonable and focused description of the desired records in order to expedite processing of the request.

**Form of Records Provided**

Records shall be made available in their original form or by a true and correct copy. Audio, photographic and computer data, or any other such records shall be exact replicas unless the department determines it is impracticable to provide exact replicas. Any reasonably segregable portion of a record shall be provided to the public after deletion of portions that are deemed exempt from disclosure.

To the extent that it is technologically and economically possible, forms and computer systems used by the City relating to the conduct of the public's business shall be designed to ensure convenient, efficient and economical access to public information, including making public information easily accessible over public networks such as the Internet. Specifically, forms and computer systems should be designed to (1) segregate exempt information from non-exempt information; and (2) reproduce electronic copies of public information in a format that is generally recognized as an industry standard format.

**Steps and Timeframes for Single Department Response**

- A. Deadlines. The deadlines listed in this Section are appropriate for extensive or demanding requests but shall not be used to delay fulfilling simple or routine requests.
- B. Forwarding of Request. If a request for any Public Information is presented to a City employee who is not responsible for responding to the request, it shall be forwarded from said staff, within one (1) business day from the day on which it was received, to the designated Department Public Records Act Coordinator, or the coordinator's supervisor if the coordinator is out of the office that day.
- C. Acknowledgment of Receipt. Within one (1) business day of receipt by the responsible Department Public Records Act Coordinator, acknowledgement of such receipt shall be made in writing to the requestor.
- D. Simple or Routine Requests. For simple or routine requests, the Department Public Records Act Coordinator shall provide the requested documents no later than two (2) business days after the date the Department Public Records Act Coordinator receives the request.
- E. Extensive or Demanding Requests. For extensive or demanding requests, no later than three (3) business days from the date the Department Public Records Act Coordinator acknowledges receipt of the request to the requestor, the Department Public Records Act Coordinator shall provide a written response to the requestor, which will include an estimate as to when the requested records will be available. The requested information shall be provided within ten (10) calendar days of the date the Department Public Records Act Coordinator acknowledges receipt of the request to the requestor, unless this deadline is extended by mutual agreement.
- F. Requested Public Information Exempt. If the City believes that the requested Public Information or a portion of the requested Public Information is exempt, the Department Public Records Act Coordinator, in coordination with the City Attorney's Office, shall so determine and make a

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written response to the requestor as specified in Section 4.3.1.7 within ten (10) calendar days from the date the City received the request. The response shall also include the record(s), if any, that the City believes is not exempt. This deadline may be extended by mutual agreement between the City and the requestor.

- G. Extension of Deadline. In unusual circumstances, the Department Public Records Act Coordinator shall notify the requestor in writing that an extension of the ten (10) calendar day period for an additional period no longer than fourteen (14) calendar days is necessary. The Department Public Records Act Coordinator shall notify the requestor as soon as possible but no later than ten (10) calendar days from the date the City receives the request. This deadline may be extended by mutual agreement between the City and the requestor.

“Unusual circumstances” shall mean the following, but only to the extent reasonably necessary for the proper processing of the particular request:

1. The need to search for and collect the requested records from storage facilities that are separate from the office processing the request.
2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
3. The need for consultation, which must be conducted with all practicable speed, with another agency having substantial interest in the determination of the request.
4. The need to write programming language or extract data that would not otherwise be extracted.

- H. Multiple Departments Public Records Requests. In order to comply promptly with requests that involve multiple records, the Department Public Records Act Coordinator shall, upon request, release records as they become available, where such an approach is both practical and pertinent. This Section is intended to prohibit the unnecessary withholding of records responsive to a request for public records until all potentially responsive documents have been reviewed and collected.

**Fees for Duplication**

The work of responding to a request for public records and making public records available shall be considered part of the regular work duties of the City employee and no fee will be charged to the requestor to cover the personnel costs of responding to a request for public records, except to the extent otherwise allowed in this policy or by other state or federal laws.

The City, however, will charge for the actual costs of duplicating paper copies of records and postage, consistent with the amounts set forth in City’s Schedule of Fees and Charges. The City will also charge for duplication costs in another medium in accordance with the amounts set forth in the Schedule of Fees and Charges (e.g., copying video or thumb drives). The City will not charge for access to data that is readily accessible without significant cost to the City.

The actual direct hourly cost incurred by City staff will be charged for responding to any request for public records that either (1) is produced only at otherwise regularly scheduled intervals, if the interim production of the report cannot be achieved without a substantial burden on City staff; or (2) requires

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the City to write programming language or extract data that would not otherwise be extracted. Before any fees are incurred, the City employee responsible for responding to the request must notify the requestor of the estimated cost to respond, including a breakdown showing how those costs were determined, and the requestor must agree to pay the estimated cost.

**Fee Waiver**

In responding to a request for records pursuant to the California Public Records Act, City staff shall apply an automatic waiver for all costs, including direct cost of duplication, which are below \$5.00. Council Appointees or their designees, upon a determination that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of government and is not primarily in the commercial interest of the requestor, may waive the direct cost of duplication (up to \$50) or the cost of programming and computer services necessary (up to \$200) to construct a record, as such waiver is specified in the Schedule of Fees and Charges that is currently in effect.

**Appealing Fees**

A requestor may appeal the imposition of fees to the Rules and Open Government Committee if he or she believes that the public interest would be better served by waiving the fees and making the record available at no charge.

**RESPONSIBILITIES****All Officials and Employees**

All City officials and employees have an obligation to accept requests for public records and provide all responsive records that will be coordinated through their Department Public Records Act Coordinator.

Employees receiving requests shall, to the extent reasonably practicable, assist the public in making focused and effective requests for records and information. Employees shall: (1) assist the member of the public with identification of records and information that is responsive to the request or the purpose of the request, if known; (2) describe the information technology about and physical location of the records; and (3) provide suggestions for overcoming any practical basis for denying the request. If the staff member or Department receiving the request is not the holder of the requested records, the staff member or Department must forward the request to the appropriate staff member or Department within 24 hours of receiving the request.

All City officials and employees have an obligation to make a reasonable effort to locate records responsive to a Public Records Act request. This includes conducting searches of work and personal accounts and devices.

It is highly recommended that records from personal devices or accounts be preserved in the City's systems by forwarding to or copying work accounts when personal accounts or systems are used.

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**Department Representatives** Each Department shall designate a person or persons who will serve as Departmental California Public Records Act (PRA) Coordinator(s) responsible for responding to requests for records and coordinating the response with the City Manager's Office, when appropriate. A list of current Department Public Records Act Coordinators is posted on the Public Records and Records Retention page of the City employee Intranet website and on the Open Government page of the City Internet Website.

The Department Public Records Act Coordinators are responsible for reviewing the responsive records from their department and identifying any records which may be exempt from disclosure. The Public Records Act Coordinators are responsible for working with their department attorney to review the responsive records, especially when records are going to be withheld from disclosure to ensure proper application of the exemption rules and documentation of the reason for the exemption.

**City Manager's Office** If a request seeks information from more than one Department, the request shall be forwarded to the Open Government Manager. The Open Government Manager will coordinate and respond to the request with the assistance of each of the Department coordinators. City Manager's Office does not make decisions to withhold records; decisions must be made in consultation with City Attorney's Office.

**City Attorney's Office** Questions regarding the California Public Records Act or any documents that may not be subject to disclosure shall be forwarded promptly to the City Attorney's Office for review. Decisions to withhold records must be made in consultation with the City Attorney's Office. Requests that are related to pending or potential litigation shall be coordinated with the City Attorney's Office.

**WITHHOLDING FROM DISCLOSURE****Common Exemptions**

Certain categories of records may be withheld from disclosure. These include, but are not limited to: (1) preliminary drafts of certain documents if the public's interest in disclosure is clearly outweighed by the public's interest of non-disclosure; (2) records related to pending litigation; (3) attorney-client communications; (4) personnel records, medical information, or other similar records, the disclosure of which would constitute an unwarranted invasion of personal privacy; (5) certain proprietary information, including trade secrets; and (6) records protected by State or Federal law.

**Withholding Kept to a Minimum**

Withholding shall be kept to a minimum and must always be for a sound and justifiable reason. Information that is exempt from disclosure must be redacted or otherwise segregated so that the nonexempt portion of requested public information may be made available. The reason for redaction or segregation must be explained to the requestor.

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If a Department, after consultation with the City Attorney's Office, determines that the records sought in a written request for records are not subject to disclosure either in whole or in part, then the Department shall advise the requestor in writing that the records will not be made available and include the reasons why access is being denied, including the citation of the specific statutory or case authority. The notice of withholding shall include the names and titles or positions of each person responsible for the denial. In addition, the requestor must be notified that he or she has the right to appeal the non-disclosure (see procedures below).

**Redaction of Exempt Information**

Records containing a mix of information that must be disclosed and information that is exempt from disclosure must be redacted or otherwise segregated so that the nonexempt portion of requested public information may be made available. The reason for redaction or segregation must be explained to the requestor.

**The Balancing Test**

The balancing test is used to determine whether the public interest is better served by releasing or withholding documents.

It is the intention of the City of San Jose to narrowly construe the balancing test if it limits the public's right of access. In order to withhold a record under Government Code Section 6255, the City shall demonstrate that the public's interest in nondisclosure clearly outweighs the public's interest in disclosure. The City's interest in nondisclosure is of little consequence in performing this balancing test; it is the public's interest, not the City's interest that is weighed.

**The following records will not be withheld on the basis of the balancing test:**

1. Accounting Records, including accounts payable and receivable, general ledger, banking and reconciliation, but excluding sales tax and resident utilities billing records.
2. City Budgets, Proposed and Adopted.
3. Public Meeting Records, including agenda, minutes, synopses, reports, audio-visual recordings, and most supporting documents, but excluding closed session records and internal City staff meetings.
4. Calendars after the fact, excluding:
  - a. Personal appointments
  - b. Information protected by the attorney-client privilege
  - c. Information about attorney work product
  - d. Information about City staff recruitment
  - e. Information about a personnel issue
  - f. Information about corporate recruiting and retention

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- g. Information about criminal investigations and security
  - h. Information about whistle-blowers
  - i. Information about those who may fear retaliation
  - j. Information that is otherwise prohibited from disclosure
5. Staff Reports and Memoranda, excluding those related to closed session or covered by attorney-client privilege.
  6. Summary Statistical Reports
  7. Employee Compensation
  8. City Master Plans
  9. Labor-Management Agreements
  10. Audit Reports and Responses
  11. Officials and Employees Disclosure Records
  12. Lobbyist Registration Records
  13. Election Results
  14. City Logos, Seals, and Other Branding Records
  15. Licenses Issued by the City, excluding information the disclosure of which would violate personal privacy rights
  16. Policies
  17. Records Retention and Destruction Policies
  18. Published Information

**The following records will not be withheld on the basis of the balancing test unless specifically approved by a vote of the Rules and Open Government Committee:**

1. Geographic and Environmental Data and Records including geographic information systems data, environmental impact reports, and environmental monitoring and testing results.
2. Development Records and Permits, excluding plans of existing structures.
3. Contracts, Leases, and Other Legal Agreements, excluding information the disclosure of which would personal privacy or intellectual property rights.

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4. Procurement Records after procurement activity has been concluded, excluding individual evaluator ratings and comments any information the disclosure of which would violate intellectual property rights.
5. Real Property Records.
6. Facility, Site, and Equipment Safety Inspection Reports, excluding security-related information.
7. Property Inventories excluding inventories of firearms and security equipment.
8. Closed Litigation Records, excluding information the disclosure of which would violate personal privacy, intellectual property rights or a protective order issued by a Court.

If the City determines that the public interest is served by not disclosing the record, the City Attorney must provide the requestor, in writing, a detailed justification. In addition, if the justification for withholding the record will expire at some point, the City Attorney must notify the requestor, in writing, that the record will be subject to disclosure at a later time.

**Deliberative Process Privilege**

Consistent with case law and Government Code Section 6255, the City may withhold a record that is protected by the “deliberative process privilege.” The deliberative process privilege is intended to afford a measure of privacy to decision makers. This doctrine permits decision makers to receive recommendatory information from and engage in general discussions with their advisors without the fear of publicity. As a general rule, the deliberative process privilege does not protect facts from disclosure but rather protects the process by which policy decisions are made. Public Records which reflect a final decision, and the reasoning which supports that decision, are not covered by the deliberative process privilege. If a record contains both factual and deliberative materials, the deliberative materials may be redacted and the remainder of the record must be disclosed, unless the factual material is inextricably intertwined with the deliberative material. The balancing test shall be applied in each instance to determine whether the public interest in maintaining the deliberative process privilege outweighs the public interest in disclosure of the particular information in question.

If the City determines that the public interest is served by not disclosing the information, the City Attorney must provide, in writing, a detailed justification. In addition, if the justification for withholding the information will expire at some point, the City Attorney must notify the requestor, in writing, that the record will be subject to disclosure at a later time.

**APPEALS PROCESS**

Requestors who believe that records have been inappropriately withheld from disclosure by a City department may resort to the City’s appeal process for public records requests. A requestor has a number of options available as follows:

- The requestor may appeal to the City’s Open Government Manager.

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- The requestor may appeal to the City Council Rules and Open Government Committee either before or after an appeal to the City's Open Government Manager by contacting the Office of the City Clerk.
- Should the response of the Rules and Open Government Committee be unacceptable to the requestor, he or she may appeal to the Board of Fair Campaign and Political Practices (Formerly Ethics Commission) or directly to the City Council by contacting the Office of the City Clerk.
- Should the response of the Board of Fair Campaign and Political Practices (Formerly Ethics Commission) be unacceptable to the requestor, he or she may appeal to the City Council by contacting the Office of the City Clerk

The requestor may file an appeal with the Santa Clara County Superior Court at any time before, during, or after resorting to any other option listed here.

**RESPONDING TO REQUESTS FOR PARTICULAR DOCUMENTS**

Below are requirements for responses for particular types of records:

**Advice from the City Attorney's Office**

Upon request, the City Attorney will release a summary document that explains any written interpretation of the California Public Records Act, the Ralph M. Brown Act or any Open Government reform adopted by the City Council. This provision does not constitute a waiver of the attorney-client privilege, does not require the disclosure of the actual advice given to any client, does not require the release of the specific information that the City is contending it should not have to release, and does not require the release of any information that the City contends could cause substantial harm to a member or members of the public.

**Disclosure of Drafts and Memoranda**

Once a proposal, initiative or other contemplated or suggested action is made public, or presented for action by any City body, agency or official, all related preliminary drafts, notes or memoranda, whether in printed or electronic form, shall be subject to disclosure if they have been retained as of the time the request is made and no other exemption applies. This provision does not require the retention of preliminary drafts, notes or memoranda that would not otherwise be retained in the ordinary course of business or pursuant to a policy, procedure, or practice.

**Disclosure of Litigation Materials**

When litigation in which the City is a party is finally adjudicated or otherwise settled, records of communications between the City and the adverse party in the litigation shall be subject to disclosure including the text and terms of any settlement agreement between the parties.

Notwithstanding the paragraph above, such disclosure shall not apply to records that are otherwise privileged under federal or state law, such as attorney-client communications, or to records sealed by the court or where disclosure is otherwise limited by the court.

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Notwithstanding any exemptions or privileges otherwise provided by law, the following are public records subject to disclosure:

1. A pre-litigation claim against the City;
2. A record previously received or created by a Department in the ordinary course of business that was not protected by the attorney-client privilege when it was received or created; and
3. When a lawsuit is finally adjudicated or otherwise settled, records of all communications between the Department and the adverse party including the text and terms of any settlement.

**Disclosure of Personnel Information**

None of the following will be exempt from disclosure under Government Code Section 6254(c), or any other provision of California law where disclosure is not forbidden:

1. The job pool characteristics and employment and education histories of all successful job applicants, including, at a minimum, the following information as to each successful job applicant:
  - (a) Years of graduate and undergraduate study, degree(s) and major and discipline
  - (b) Years of employment in the private and/or public sector
  - (c) Whether currently employed in the same position for another public agency
  - (d) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question
2. The professional biography or curriculum vitae of any employee (also known as resume), provided that the home address, home telephone number, personal email address, social security number, age and marital status of the employee must be redacted.
3. The job description of every employment classification.
4. The total compensation, by category, paid to an employee, including salary and City-paid benefits.
5. Any memorandum of understanding between the City or department and a recognized employee organization.
6. The amount, basis and recipient of any performance-based increase in compensation, benefits or both, or any bonus, awarded to any employee.

**Public Records Policy and Protocol****6.1.1****Disclosure of Information Relating to Misconduct of City Officials**

The term "City Official" means the Mayor and Members of the City Council; any appointees of the City Council, Mayoral or Council unclassified staff members, the City Manager and his or her Assistant City Manager, Deputy City Managers, and heads of offices reporting to the City Manager, and City department heads.

The term "misconduct" includes dishonesty, misuse of City property or City funds, any violation of conflict of interest policies, the City's Gift policy or Discrimination and Harassment policy, inexcusable neglect of duty, fraud in securing employment and unlawful political activity.

Where there is reasonable cause to believe the complaint is well-founded, records of misconduct by a City Official, including any investigation and discipline, if any form of discipline is imposed, are subject to disclosure. Information that falls within the protection of any privileges or rights provided under the law may be redacted.

Nothing in this policy may be constructed as limiting access to other disciplinary records as permitted by the California Public Records Act.

**Disclosure of Log of Disciplinary Actions – Regular Classified Civil Service Employees**

The Office of Employee Relations shall maintain a log of disciplinary actions taken by the City for regular classified civil service employees. An item may be included in the log only upon issuance of a notice of discipline. The log must be maintained, updated as frequently as possible and available for inspection. The log shall include the department, employee classification (except for single position classifications or unique classifications, for which releasing the classification would identify the employee), type of discipline (i.e. suspension, demotion, step reduction or dismissal/termination), basis of the complaint (such as violation of the San Jose Municipal Code, Council Policy or Administrative Policy) and any final disposition. Identifying information must not be included in the log. Nothing in this policy may be construed as limiting access to other disciplinary records as permitted by the California Public Records Act.

**Disclosure of Code Enforcement Records**

The following information is public and subject to disclosure:

1. Case number;
2. Name of the subject of the complaint;
3. Address of the property;
4. Substance of the complaint;
5. Notices of violation;
6. Compliance orders;

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7. Administrative citations;
8. Warning notices;
9. Other documents submitted to the Appeals Hearing Board to support enforcement;
10. Resolutions of the Appeals Hearing Board;
11. Recordings of the Appeals Hearing Board proceedings; and
12. Any documents submitted to the Court for an inspection warrant or other legal action, unless the documents are filed with the Court under seal or there is a Court order preventing disclosure of the documents or information contained in them.

The name or other identifying information of the complainant in Code Enforcement complaints is confidential and must be redacted from any document unless the complainant agrees to disclose his or her identity.

Investigative files are not public until after the case has been closed. However, any information within the investigative file that would identify the complaining party's identity, information that would disclose legitimate law enforcement techniques that require confidentiality in order to be effective and information protected by other exemptions will be redacted.

**Disclosure of Information relating to Contracts****A. Solicitation for Contracts:**

1. All correspondence regarding a solicitation for contracts with the City, including responses to Requests for Proposals, become the exclusive property of the City and are public records under the California Public Records Act. All documents that are sent to the City are subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement as set forth in the California Public Records Act.
2. Therefore, any proposal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret" or "Proprietary," or fails to provide the exemption information required as described below will be considered a public record in its entirety.
3. All formal construction bid responses become public upon bid opening and must be made available immediately after bid opening.
4. The City shall not disclose any part of any non-construction proposal before it announces a recommendation for award, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a recommended award, all proposals received in response to a solicitation will be subject to public disclosure. If a proposer believes that there are portion(s) of the proposal, which are exempt from disclosure under the California Public Records Act, the proposer must mark it as such and state the specific provision in the California Public Records Act, which provides the exemption as well as the factual basis for claiming the exemption. For example, if a proposer submits trade secret

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information, the proposer must plainly mark the information as "Trade Secret" and refer to the appropriate section of the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption.

5. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information a proposer submits is a trade secret. If a request is made for information marked "Confidential," "Trade Secret" or Proprietary," the City will provide proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.
  6. After the notice of intent to award a City contract has been announced, the names of the evaluators and collective summaries of the evaluations or ratings must be made available if requested; under no circumstances are the individual evaluations or ratings (also known as "score sheets") subject to disclosure.
- B. When the City has negotiated the following types of agreement without a competitive process: (1) personal, professional or other contractual services for \$500,000 or more; (2) a lease or permit having (a) total anticipated revenue or expense to the City of \$500,000 or more; or (b) a term of ten years or more; or (3) any franchise agreement, then, after the negotiations have been concluded, all documents exchanged and executed, related to the position of the parties, including draft contracts, must be made available for public inspection and copying upon request.

This provision does not require the retention of draft contracts that would not otherwise be retained in the ordinary course of business or pursuant to a policy, procedure or practice. Upon completion of negotiations, the executed contract, including the dollar amount of the contract, must be made available for inspection and copying.

- C. San Jose Municipal Code Section 4.04.080 provides:
1. The City Manager must file a quarterly report with the City Council, which describes all the contracts having a value of One Hundred Thousand Dollars or more that were entered into and executed by the City Manager, City Attorney, City Clerk and City Auditor in the preceding calendar quarter. The report must identify the subject matter of the contract, the person(s) or entity(ies) with whom the contract was made and the amounts, if any, payable by or to the City under each contract.
  2. The City Attorney, City Clerk, and City Auditor must provide to the City Manager the information necessary to enable the preparation and filing of quarterly reports.
- D. Contracts over \$100,000 that are not entered into by the Council Appointees listed in Municipal Code Section 4.04.080 are reported to the City Council when they are requested to be approved.
- E. An index of the location of every contract, except for Purchase Orders, regardless of amount or who approved it, is available and open to public inspection at the City Clerk's Office.

**Public Records Policy and Protocol****6.1.1****Disclosure of Budgetary and Other Financial Information**

Proposed or final budgets for the City or any of its departments, programs or projects are subject to disclosure and should be made available in electronic form.

All bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee, the purpose for which the payment was made and who approved the payment are subject to disclosure, except that any information that is protected by privilege or other right provided under the law may be redacted.

**Disclosure of Electronic Mail**

E-mail shall be treated the same as other written documents. If the e-mail is kept in the ordinary course of business, it is a public record unless it falls within an exemption. Additional information regarding the storage and use of e-mail in the City may also be found in Section 1.7.1 of the City Administrative Policy Manual entitled "Use of E-Mail, Internet Services & Other Electronic Media."

**Disclosure of Social Media and Other Electronic Platform Content**

Social media content shall be treated the same as other written documents. Social media content should be retained in accordance with City retention schedules or the minimum two-year period as required under the California Government Code.

**RECORDS RETENTION**

This policy and protocol does not obligate City departments to retain documents beyond the period of time indicated by the City's records retention schedule. In the event a request for records is received before its destruction under the City's record retention schedule, the requested records will be provided.

**RELATED CITY POLICIES**

[City Administrative Policy Manual Section 1.7.1 - "Use of E-Mail, Internet Services & Other Electronic Media"](#)

[City Administrative Policy Manual Section 6.1.5 - "Records Retention and Disposition"](#)

[City Administrative Policy Manual Section 1.6.2 - "Personal Use of City Equipment"](#)

[Administration & Government Council Policy 0-4 - "Consolidated Policy Governing Boards and Commissions."](#)

[Consolidated Open Government and Ethics Provisions](#)

[Schedule of Fees and Charges](#)

[Various Records Management and Public Records Resources](#)

**Public Records Policy and Protocol**

**6.1.1**

Approved:

/s/ Jennifer A. Maguire  
Assistant City Manager

May 15, 2019  
Date