

REPORT TO THE CITY COUNCIL (Revised)

November 7, 2019

FROM: Councilmembers Karbassi, Bredefeld, and Mayor Brand

BY: Doug Sloan, City Attorney

SUBJECT

APPROVE AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADDING SECTION 2-319 OF THE FRESNO MUNICIPAL CODE, RELATING TO CONFIDENTIALITY OF CLOSED SESSION ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS.

RECOMMENDATION

Approve the Ordinance, which would prohibit dissemination of closed session attorney-client privileged records or communications to any unauthorized person. Violations may be punished as a misdemeanor.

EXECUTIVE SUMMARY

Dissemination of confidential closed session attorney-client privileged information to unauthorized persons can be damaging to the City's legal and financial interests. Without this ordinance, there may be no effective means of enforcement.

This ordinance prohibits disclosures of clearly marked confidential closed session attorney-client privileged records to unauthorized persons. The maximum penalties pursuant to the Charter and Municipal Code include fines of up to \$1000 and/or up to one year in jail (Charter section 1502). The City Attorney, or independent counsel hired by the Council or City Attorney, may enforce.

Revision Changes:

1. The ordinance applies only to confidential attorney-client privileged closed session related records and communications.
2. The section prohibiting others wrongfully receiving confidential information and then disseminating it has been removed.
3. A section on "Whistleblower Protection" has been added. It provides that if an official or employee believes there is a legal violation, but this is based upon protected confidential information, then that person may discuss the matter with law enforcement authorities. Doing so would not be a violation of the ordinance.
4. A "safe harbor" is provided so that a person in doubt whether certain information is protected or can be disclosed to a certain person, who followed written advice from the City Attorney would be immune from prosecution.

By way of further background, below are similar provisions of San Francisco and Oakland:

San Francisco Campaign and Governmental Conduct Code: "No current or former officer or employee of the City and County shall: (a) willfully or knowingly disclose any confidential or privileged information, unless authorized or required by law to do so; or (b) use any confidential or privileged information to advance the financial or other private interest of himself or herself or others." (SF C&GC 3.228) "Any person who knowingly or willfully violates any of the City's conflict of interest and government ethics laws shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$10,000 for each violation or by imprisonment in the County jail for a period of not more than one year in jail or by both such fine and imprisonment." (SF C&GC 3.252(a)).

Oakland Municipal Code, Chapter 2.25 - City of Oakland Government Ethics Act: "A Public Servant shall not willfully and knowingly disclose for pecuniary gain, personal advantage or private interest, to any other person, confidential information by him or her in the course of his or her official duties." (OMC 2.25.040(D)) "Any person who knowingly or willingly violates any provision of this Act is guilty of a misdemeanor." (OMC 2.25.080(C)(1)).

ENVIRONMENTAL FINDINGS

This action is not a project under CEQA.

FISCAL IMPACT None.