

# CITY COUNCIL POLICY CITY OF NATIONAL CITY

<b>TITLE:</b> Unauthorized Disclosure of Information Revealed in Closed Session	<b>POLICY # 113</b>
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<b>ADOPTED:</b> March 12, 1996	<b>AMENDED:</b> <del>October 8, 2013</del> August 15, 2023
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## Purpose

To establish a policy to prevent the unauthorized disclosure of information revealed in Closed Sessions of the City Council, and to provide remedies in the event of any such unauthorized disclosure.

## Policy

No person present in a Closed Session shall disclose, outside of the Closed Session, any information revealed in such Closed Session, without the prior authorization of a majority of the City Council. Any violation of this policy may be enforced by one or more of the following actions, as directed by a majority of the City Council:

1. Referral to the Office of the District Attorney for prosecution for violation of Government Code Section 1098.
2. Referral to the Office of the District Attorney for prosecution for violation of Government Code Section 1222.
3. Referral to the Office of the District Attorney for prosecution for violation of Government Code Section 3060.
4. Referral of a Council-member who has willfully disclosed confidential information in violation Government Code section 54963 to the Grand Jury.
5. Obtaining an injunction to prevent further unauthorized disclosure of information revealed in a Closed Session.
6. In the event an unauthorized disclosure is committed by a member of the City Council, that Councilmember may be censured by a majority vote of the City Council. Prior to imposing censure, the Councilmember subject to censure ~~must first shall~~ be provided ten (10) calendar days' notice of the City Council's intention to impose the censure, and be given an opportunity to respond to the proposed censure.
7. In the event an unauthorized disclosure is committed by a member of the City staff, that staff member may be subject to disciplinary action.

This policy shall not prohibit the making of a public report of actions taken in a Closed Session as required by Government Code Section 54957.1.

## Related Policy References

City Council Policy #104

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Government Codes 1098, 1222, 306, 54957.1, 54963

City Attorney Memorandum: Original Feb. 29, 1996. Revised Jan. 7, 2013 (attached)

Prior Policy Amendments:

~~None~~

March 12, 1996 (Resolution No. 96-29) Establishing Policy

June 11, 2013 (Revised – No Resolution – Refer to Meeting Minutes)

October 8, 2013 (Resolution No. 2013-147)

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## ==MEMORANDUM==

George H. Eiser, III  
City Attorney  
City of National City  
February 29, 1996

Revised January 7, 2013  
Claudia G. Silva  
City Attorney  
City of National City

### PUBLIC DISCLOSURE OF INFORMATION DISCUSSED IN CLOSED SESSION: POSSIBLE REMEDIES

#### Prohibited by the Brown Act - Improper to Disclose

- A person cannot disclose information discussed in closed session without authorization of the City Council. Government Code section 54963.

#### Remedies under Government Code Section 54963

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grand jury."

#### City May Not Enact Criminal Ordinance

- California Attorney General has held that a city may not adopt an ordinance making it a misdemeanor for any person present during a closed session of the city council meeting to publicly disclose the substance of any discussion properly held during the session unless authorized by the city council. (76 Ops. Cal. Atty. Gen 289 (1993).)

#### Additional Possible State Law Violations

- Any current public officer or employee who willfully and knowingly discloses for pecuniary gain, to any other person, confidential information acquired by him or her in the course of his or her official duties, or uses any such information for the purpose

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of pecuniary gain, is guilty of a misdemeanor. (Government Code §1098.)

- Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor. (Government Code §1222; Adler v. City Council of the City of Culver City (1960) 184 Cal. App. 2d 763, 7 Cal. Rptr. 805.)
- An accusation in writing against any officer of a district, county, or city, including any member of the governing board of personnel commission of a school district or any humane officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed. An accusation may not be presented without the concurrence of at least 12 grand jurors. (Government Code §3060.)

### Injunction

- An injunction may be obtained to prevent future public disclosure of information discussed in closed session. (Government Code §54960; Sacramento Newspaper Guild v. Sacramento County Board of Supervisors (1968) 263 Cal. App. 2d 41, 69 Cal. Rptr. 480.)

### Censure

- Although there is no specific statutory or case authority for censure of a city councilmember, one reported decision (Braun v City of Taft (1984) 154 Cal. App. 3d 332, 201 Cal. Rptr. 654) involved the censure of a councilmember by a city council for release of city documents claimed to be confidential. The court set aside the censure action, finding that the documents released were in fact not confidential. If censure for public release of information discussed in closed session is to be imposed, the city council should have previously adopted clear, unambiguous rules of conduct which specifically authorize censure for such conduct. The individual subject to censure must also have notice and the opportunity to be heard before the censure is imposed. Under the First Amendment, censure is not appropriate for expansion of unpopular views, unless their expression substantially disrupts the council meeting. (Richard v. City of Pasadena (1995) U.S. Dist. Ct. C.D. Cal.)