

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Maureen Benson, City Clerk *MB*
Prepared by: Blanca Garza, Deputy City Clerk II *BG*

DATE: May 12, 2015 (CC Meeting of 5/20/2015)

SUBJECT: Consider Resolution Authorizing the Destruction of City Records (Subpoenas Received by the City for Private Litigation from 2012 and Prior) on File in the Administrative Services Department

BACKGROUND

Staff is requesting authorization to destroy various records on file in the Administrative Services Department. The request is for the destruction of subpoenas received by the City for Private Litigation (to which the City is not a listed party), as specifically noted on Exhibit "A", of the attached draft resolution.

The approved City of Moorpark Records Retention Schedule (MRRS) does not specifically note the record series for subpoenas. The California Local Government Records Management Guidelines (CLGRMG) recommends retaining subpoenas received and/or served for a period of current year plus two (2) years. The City Attorney's Office has recommended a retention from the "response completed plus two years."

When determining a retention period for a record series, the City considers a number of factors, including whether the records may be useful in certain types of litigation and will retain the records for the applicable statute of limitations period set forth in the California Code of Civil Procedure. Additionally, the City will review federal law and regulations to determine whether those laws or regulations impact the length of time a record should be retained. In this case, neither the California Code of Civil Procedure nor federal laws expressly require a longer retention period for the records proposed for destruction. The California Code of Civil Procedure does not state a record retention period for subpoenas issued under California state law, but Sections 1985.3, 1985.6, 2025.480 of the California Code of Civil Procedure impose very short periods in which a subpoena response may be challenged, and consequently, a lengthier retention period is not required.

Government Code Section 34090, et. seq., authorizes the head of a city department to destroy any city record, document instrument, book or paper, under his/her charge, without making a copy thereof, after the same is no longer required after the minimum retention period of two years has been met, with the approval of the legislative body by resolution

and the written consent of the City Attorney unless the record falls into certain categories specified in Section 34090. In this case the records are older than the applicable retention period recommended and they do not fall into those certain categories, as the records do not affect title to real property or liens thereon, are not court records or matters of pending or threatened litigation, are not minutes, ordinances or resolutions of the City Council or any board or commission of the City; and are not records required to be kept by statute. Additionally, these records are not an agreement, development project and/or capital project files.

DISCUSSION

The records proposed for destruction are listed below and on Exhibit "A" of the attached resolution, all such records meet or exceed required retention periods, and the applicable retention periods are included for reference. Their destruction has been approved and consented to by the Assistant City Manager, City Clerk, and City Attorney. The records are subpoenas received by the City for Private Litigation.

FISCAL IMPACT

The destruction of the specified records noted in the attached draft resolution will not create an expense and will eliminate the cost to store records which have met their retention.

STAFF RECOMMENDATION

Adopt Resolution No. 2015-____.

Attachment: Draft Resolution

RESOLUTION NO. 2015-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AUTHORIZING THE DESTRUCTION OF SUBPOENAS RECEIVED BY THE CITY FOR PRIVATE LITIGATION ON FILE IN THE ADMINISTRATIVE SERVICES DEPARTMENT

WHEREAS, Government Code Section 34090, authorizes the head of a City department to destroy City records with the approval of the legislative body by resolution and written consent of the city attorney after the records are no longer required, unless another law imposes a different process; and

WHEREAS, Government Code Section 34090 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; and

WHEREAS, the California Local Government Records Management Guidelines recommend retaining subpoenas received and/or served for a period of current year plus two (2) years; and

WHEREAS, the approved City of Moorpark Records Retention Schedule does not specifically note a record series for subpoenas with the applicable retention period; and

WHEREAS, the California Code of Civil Procedure does not state a record retention period for subpoenas issued under California state law, but Sections 1985.3, 1985.6, 2025.480 of the California Code of Civil Procedure impose very short periods in which a subpoena response may be challenged, and consequently, a lengthier retention period is not required; and

WHEREAS, federal laws do not expressly require a longer retention period; and

WHEREAS, the City Attorney's Office has recommended a retention of "response completed plus two years"; and

WHEREAS, the records proposed for destruction are listed in Exhibit "A" and they have met their retention in accordance with Government Code Section 34090.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council finds that the records set forth in Exhibit "A", attached hereto, are older than the applicable retention periods required by State law (Government Code Section 34090), are older than the applicable retention period recommended by the California Local Government Records Management Guidelines, and the City of Moorpark's adopted Retention Schedule does not include a citation for the listed

record series. Further, the City Council finds the listed records are not currently subject to a legal hold.

SECTION 2. "Legal Hold", as used herein, refers to the duty of the City to preserve and not destroy any records that are potentially relevant to any of the following in which the City may be involved: a reasonably anticipated claim or litigation; an ongoing claim or litigation; a pending employee grievance; a pending regulatory or governmental investigation; a pending subpoena; a pending Public Records Act request, a pending audit, or similar legal matter. Any records subject to a Legal Hold must be preserved in all forms in which the record exists, including both paper and electronic formats.

SECTION 3. The City Council further finds that the records do not affect title to real property or liens thereon, are not court records, are not minutes, ordinances or resolutions of the City Council or any board or commission of the City; and are not records required to be kept by statute.

SECTION 4. The City Council also finds that the City Attorney, Assistant City Manager, and the City Clerk have given written consent to the destruction of said records, as shown on Exhibit "A".

SECTION 5. The City Council hereby authorizes the City Clerk to destroy the City Records listed in Exhibit "A".

SECTION 6. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this ____ day of _____, 2015.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

Attachment: Exhibit "A"

EXHIBIT "A"
CONSENT FOR RECORDS DESTRUCTION
Citations Sources:

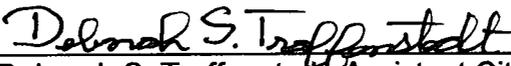
Code of Federal Regulations: None Applicable
California Code of Civil Procedure: Sections 1985.3, 1985.6, 2025.480
California Government (GC) Code, Section 34090, et. seq.
California Local Government Records Management Guidelines (CLGRMG)
City of Moorpark Records Retention Schedule (MRRS)

DESCRIPTION	DATES OF RECORDS TO BE DESTROYED	RETENTION REQUIREMENT (YEARS)	CITATION (For longest retention period)
Records Subpoenas Received by the City of Moorpark for Private Litigation (City not a listed party).	2012 and Prior	Response Completed + 2 Years	CLGRMG

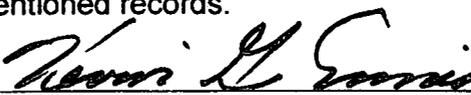
Consent to Destruction:


Maureen Benson, City Clerk

Department Head Authorization: I certify that the records on the above list are no longer required, are eligible for destruction, and do not have to be retained based upon any record retention requirements imposed by any statute or law, or pursuant to a grant received by the City or a bond issued by the City, and are not related to or potentially relevant to any of the following in which the City may be involved: a reasonably anticipated claim or litigation, an ongoing claim or litigation, a pending employee grievance, a pending regulatory or governmental investigation, a pending subpoena, a pending Public Records Act request, a pending audit, or similar legal matter. I recommend that said records be destroyed.


Deborah S. Traffenstedt, Assistant City Manager

City Attorney Authorization: I do hereby certify that I am the City Attorney for the City of Moorpark, I have reviewed the above list of records and based upon the representations made herein by the department head, agree that the above-mentioned records are not records required to be kept by statute or law, provided destruction thereof has been approved by the City Council. My review has been limited to the descriptions contained on the list and did not involve review of the actual records. Based on the foregoing, I consent to the destruction, of the above-mentioned records.


Kevin Ennis, City Attorney