



**COUNCILMEMBER DAVID ALVAREZ**

**City of San Diego  
Eighth District**

**MEMORANDUM**

**DATE:** January 28, 2016

**TO:** Council President Sherri Lightner

**FROM:** Councilmember David Alvarez

**SUBJECT:** Californians Aware Open Government Proposal

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On January 13, 2016, Californians Aware proposed a draft ordinance to the Rules Committee related to the public disclosure of documents, communications and writings by City officers. Committee members requested the City Attorney address questions related to meet and confer obligations. In his response (attached), the City Attorney attached a draft ordinance covering unrepresented employees and stated that "...we see no legal impediment to this moving forward to City Council for adoption in February as an ordinance and reinforcement as a voter-approved proposition in June to ensure that it cannot be amended or rescinded in the future without voter approval."

I would request that this ordinance be docketed for City Council consideration in February. Additionally, if the Council chooses to move forward with the ordinance, all meet and confer obligations with represented employees should take place immediately.

**CC:** Honorable Mayor Faulconer  
Honorable City Attorney Jan Goldsmith  
Andrea Tevlin, IBA  
Donna Frye, President, Californians Aware

Office of  
The City Attorney  
City of San Diego

MEMORANDUM  
MS 59

(619) 236-6220

**DATE:** January 19, 2016  
**TO:** Honorable Mayor and City Councilmembers  
**FROM:** City Attorney  
**SUBJECT:** Californians Aware Proposal Presented at the Rules Committee Meeting of January 13, 2016

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This Office has prepared the attached draft ordinance at the request of the Rules Committee (Committee) on January 13, 2016.

In response to questions from Committee members, this Office has concluded that the City of San Diego must first comply with meet and confer requirements of state labor laws before adopting an ordinance pertaining to represented employees' private e-mails or private devices. This meet and confer obligation would extend to an ordinance adopting the change in local law or even placing the matter on the ballot for voters to approve as a City Council-initiated proposition.

However, no such meet and confer requirement exists for unrepresented employees. This would include all elected officials and their staffs, including the City Attorney and unrepresented management at the City Attorney's Office. Accordingly, the City Council could adopt such an ordinance now covering unrepresented employees and implement it, while meeting with labor organizations regarding extension of the ordinance to cover represented employees. Even if it is not extended, the ordinance adopted at this point would cover policy makers and their staffs, as well as the Mayor and his or her staff and the City Attorney and his or her unrepresented staff.

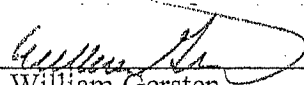
Enclosed is the ordinance covering unrepresented employees. This could be placed before the full City Council without delay. In response to committee questions, we see no legal impediment to this moving forward to City Council for adoption in February as an ordinance and reinforcement as a voter-approved proposition in June to ensure that it cannot be amended

Honorable Mayor and City Councilmembers  
January 19, 2016  
Page 2

or rescinded in the future without voter approval. The only limitation is the need to meet and confer as to union employees which can be addressed as discussed above.

JAN I. GOLDSMITH, CITY ATTORNEY

By

  
\_\_\_\_\_  
William Gersten

Deputy City Attorney

JIG:ccm:hm  
Attachments  
cc: Donna Frye, Californians Aware  
Steven Hadley, Committee Consultant  
MS-2016-2  
Doc. No.: 1205890

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 48 AND SECTION 22.4801, RELATING TO THE PUBLIC DISCLOSURE OF DOCUMENTS, COMMUNICATIONS, AND OTHER WRITINGS.

WHEREAS, public disclosure of City records is in the public interest; and

WHEREAS, to further transparency and public disclosure of City records, all documents, communications and other writings created or received in the course of conducting City business by appointed or elected City officers or unrepresented City employees, regardless of medium, are classified as City records for purposes of disclosure; and

WHEREAS, NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 2 of the San Diego Municipal Code is amended by adding Division 48 and section 22.4801 as follows:

**Article 2: Administrative Code**

**Division 48: Public Records**

**§22.4801. Public Disclosures of Documents, Communications, and Other Writings**

All documents, communications, and other writings, including emails and text messages, recorded in whatever medium, created or received in the course of conducting any City business by its appointed or elected officers, unrepresented employees, departments, bodies or agents, are deemed to be used and controlled by the City for purposes of public disclosure. In addition, all such records shall be presumed open to the public unless such access is prohibited by state or federal

law or by an ordinance, regulation, or policy of the City Council or other City authority that is consistent with San Diego City Charter section 216.1. These and other City records shall be retained for a minimum of two years.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By \_\_\_\_\_  
Jan I. Goldsmith  
Deputy City Attorney

JIG:ccm  
January 15, 2016  
Or.Dept: City Council  
Doc. No.: 1205842

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE: ~~Struck Out~~**

**NEW LANGUAGE: Underline**

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JIG:ccm  
January 15, 2016  
Or.Dept: City Council  
Doc. No.: 1205843