

ORDINANCE NO. _____

ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA ADDING
CHAPTER 1-10 TO THE SANTA ROSA CITY CODE ENTITLED “OPEN GOVERNMENT”

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1. Chapter 1-10, “Open Government” is hereby added to Title 1 of the Santa Rosa City Code to read as follows:

“Chapter 1-10

OPEN GOVERNMENT

Article I. Introduction

1-10.010 Findings and purpose.

- (A) The City of Santa Rosa embraces a culture of open government in an effort to ensure public trust, engage the community, and establish a system of transparency, public participation, and collaboration.
- (B) In 2013, the Mayor of Santa Rosa convened the Mayor’s Open Government Task Force (herein known as the Task Force) to improve openness and transparency in Santa Rosa municipal government. The Task Force presented its report to the Santa Rosa City Council on December 2, 2014. The report offered recommendations in four areas:
 - 1. Immediate Actions for Council
 - a. Set a Council goal of “open and transparent government”
 - b. Set three strategic objectives for the organization:
 - 1 Hire a communications director (now Community Engagement Director)
 - 2 Adopt a sunshine ordinance based on the recommendations of the Task Force
 - 3 Create a mission statement for the City which embraces community engagement
 - 2. Develop a culture that values public engagement
 - 3. Develop a culture based on communication
 - 4. Develop policies that promote openness

This ordinance is thus just one component of the recommendations of the Task Force.

- (C) Democracy in our representative form of government requires that the public has an early and adequate opportunity to understand the government’s activities and to communicate its thoughts and concerns to its elected and appointed representatives, and that those representatives have an early and adequate opportunity to consider those thoughts and concerns and then act effectively and in a timely manner. The City of Santa Rosa honors all of those who live in our community and values their input and feedback.
- (D) The government’s obligation is to balance these expectations responsibly in such a way that it is able to function and carry out its mission of ensuring the public’s health, safety and general welfare in a fiscally and environmentally sustainable manner.
- (E) Openness strengthens our democracy and promotes efficiency and effectiveness in Government, and must be embedded in the City’s way of doing business by implementing sustainable structures that transcend political and staffing fluctuations.
- (F) Accordingly, the purpose of this chapter is to establish new local standards to supplement the provisions of the Ralph M. Brown Act and the California Public Records Act, and to codify certain existing policies and practices that exceed the state law requirements. This chapter allows opportunities to adopt new practices based on the recommendations of the Mayor’s Open Government Task Force to ensure that the public has an early and adequate opportunity to be informed of the City’s activities, to communicate its thoughts and concerns to its elected and appointed officials, and to work collaboratively to develop solutions in a participatory manner.

1-10.020 Definitions.

The following words and phrases shall have the meanings specified below:

- (A) "Agenda" means a document that informs the public of the time and place of a public meeting and the items to be transacted or discussed at that meeting, including items to be discussed in closed session.
- (B) "Agenda Packet" means the Agenda of a particular Meeting with all associated Supporting Documents.
- (C) "Brown Act" means the Ralph M. Brown Act codified in California Government Code sections 54950 et seq., as that Act may be amended from time to time.
- (D) “Business Days” means Monday through Friday, excluding Federal and State holidays.

- (E) "Citizen's Guidebook" means a reference tool prepared by the City in accordance with section 1-10.060 of this Chapter.
- (F) "Closed Session" means a Meeting of the Legislative Body conducted in private without the attendance of the public or press in accordance with state law and the provisions of section 1-10.050 of this Chapter.
- (G) "Data" means facts or statistics gathered or generated by City departments concerning City operations, programs and projects.
- (H) "Legislative Body" shall have the meaning set forth in Government Code section 54952, as such section may be amended from time to time.
- (I) "Meeting" shall have the meaning set forth in Government Code section 54952.2, as such section may be amended from time to time.
- (J) "Minutes" means a document summarizing what transpired at a Meeting, prepared in accordance with section 1-10.070 of this Chapter.
- (K) "Open by Default" means that all data generated by the City shall be open to public review unless such data contain information that is exempt from disclosure under the Public Records Act or any other federal, state or local law, rule or regulation.
- (L) "Open Data Portal" means a single web portal incorporated into the City's website that contains all disclosable City data for view and use by the public.
- (M) "Public Records Act" means the Public Records Act, as codified in California Government Code sections 6250 et seq., as such Act may be amended from time to time.
- (N) "Presiding Officer" means the officer with the authority and responsibility for presiding over a Meeting.
- (O) "Supporting Documents" means (i) materials prepared by staff for submission to the Legislative Body in connection with a particular agenda item, including staff report, proposed resolutions(s), powerpoint presentations(s), and attachments, if any; and (ii) correspondence submitted by the public through a designated portal, identified for inclusion in the Agenda Packet in connection with the particular agenda item, and received at least one business day prior to the posting of the final agenda in accordance with section 1-10.030(C).

Article II. Public Access to Meetings

1-10.030 City Council agenda requirements; regular meetings.

- (A) No later than twelve (12) business days before a regular meeting of the City Council, the City Clerk's Office shall post on the City's website and at the official posting locations at City Hall a preliminary agenda containing a brief meaningful description of each item of business to be transacted or discussed at the meeting. The preliminary agenda shall be provided in both English and Spanish. An email shall be sent to the GovDelivery or similar database composed of group of individuals and/or organizations who have requested to be notified of when the agenda is posted.
- (B) A description of the agenda item is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education of the general substance and significance of the item. The description should be concise and written in plain, easily understood language. In addition, the description shall include, for each item of business, a brief statement of the recommended action or a statement that the item is for discussion only. When possible, the agenda shall include a link to prior Council actions on the item.
- (C) No later than four (4) business days before a regular Meeting of the City Council, final agendas shall be posted to the City's website and at the official posting locations at City Hall, and hard copies shall be made available at the front counter in the City Manager's Office and at the Central Branch of the Sonoma County Public Library. In addition to the contents identified in subsection (B), the final agenda shall include, for each item of business, a brief statement of any potential budget impacts, to the best of staff's knowledge at the time. The final agenda shall be provided in both English and Spanish.
- (D) Supporting Documents shall be added to the preliminary Agenda posted on the City's website as those Supporting Documents become available for publication. Supporting Documents shall also be included in the final Agenda posted on the City's website and in hard copies provided pursuant to subsection (C). Supporting Documents are not required to be translated into Spanish.
- (E) Complete final agenda packets for City Council regular meetings shall remain posted on the City's website and available for review at the City Manager's Office and the Central Branch of the Sonoma County Public Library during normal business hours, from the initial time of posting in accordance with subdivision (C) until the scheduled meeting is complete.
- (F) A correction or supplement to an item already included in an Agenda Packet may be considered by the City Council if the correction or supplement to the item: (i) is within the scope of the description provided on the final agenda, and (ii) all materials

provided to the City Council in connection with such correction or supplement are made available to the public at the same time such materials are provided to the City Council.

- (G) An item of business that does not appear on the preliminary agenda posted pursuant to subdivision (A) may nevertheless be placed on the final agenda posted pursuant to subdivision (C), under the following circumstances:
1. An urgent item of business that does not appear on the preliminary agenda posted pursuant to subdivision (A) may nevertheless be placed on the final agenda posted pursuant to subdivision (C), but shall not be discussed or acted upon except upon a showing of good cause and with the concurrence of six council members, or by unanimous vote if fewer than six members are present. The Council shall determine that good cause exists prior to taking action upon the item. If good cause is not found to exist, the item may be heard at the Council's next regular meeting. For purposes of this section, a showing of "good cause" will require a finding by the Council that as a result of exceptional circumstances beyond the control of the Council, compliance with the 12-business day notice requirement would impose a substantial burden on the City's ability to conduct its business or result in prejudice to a private person. Prior to making such a finding, staff shall provide a detailed explanation of the reason the agenda item could not be provided to Council and members of the public within the 12-business day notice requirement of Subdivision (A).
 2. For purposes of subsection (G)(1), it shall be presumed that, in the event of an appeal to the City Council of any decision by a subordinate board, commission or committee that grants or denies rights to a private party, compliance with the 12-business day notice requirement would, in fact, result in prejudice to that private party. For that reason, absent substantial evidence to the contrary, such appeals shall be exempt from the 12-business day notice requirement of subsection (A).
- (H) No action or discussion shall be undertaken on any item not appearing on the posted final agenda, except that, following public comment on items not on the agenda, members of a legislative body may briefly respond to statements made or questions posed by members of the public during the comment period. In addition, members of the legislative body may ask a question for clarification, provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning the matter raised by the public, or request that the matter be placed on the agenda for a subsequent meeting.
- (I) Notwithstanding subdivision H, the City Council may take action on items of business not appearing on the posted agenda under any of the following conditions:

- (1) Upon a determination by a majority vote of the City Council that an emergency, such as act of war, natural disaster or public disruption (e.g. work stoppage, crippling activity or other activity) poses a severe threat to public health and safety.
 - (2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the final agenda being posted in accordance with subsection (C).
 - (3) The item was on an agenda posted pursuant to subdivision (C) for a prior meeting of the City Council occurring not more than five (5) calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.
- (J) Nothing in this section shall limit the rights of the City Council to give notice of, and to hold, closed sessions and/or to call and hold special or emergency meetings in accordance with the provisions of the Brown Act.
- (K) The City Clerk's Office shall ensure that agendas for regular and special meetings are made available upon request to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type. Translation or interpreter services shall be available free of charge upon request. If the request is received by the City Clerk at least 7 business days prior to the City Council meeting, the translation or interpreter services will be provided no later than two (2) business days prior to the City Council meeting.
- (L) Copies of agendas in a language other than English or Spanish will be made available free of charge upon request. If the request is received at least 7 business days prior to the City Council meeting, the copy shall be provided no later than two (2) business days prior to the City Council meeting.
- (M) Copies of the agendas in a language other than English or Spanish will be made available automatically if the threshold of that particular non-English and non-Spanish speaking population reaches and/or exceeds 5% of the total city population as determined by the latest United States Census.
- (N) The Open Government Ordinance will be posted on the City website and each City Council agenda shall include information on how to obtain a free copy of the ordinance (electronic and/or paper).

1-10.040 Broadcast of meetings.

- (A) All regular meetings of the City's Council, boards, commissions, and committees that are held in the City Council Chamber shall be recorded, televised, video-streamed live via the City website, as well as archived for replay, and broadcast via radio. The live broadcasts and archived video shall be close captioned. Archived videos shall contain an index of agenda items that will enable members of the public to automatically advance to the start of a particular agenda item by clicking on that agenda item in the video index. Live broadcasts shall include closed captioning in English. Archived videos shall include closed captioning in both English and Spanish.
- (B) The broadcast requirements shall not apply if necessary equipment malfunctions. In such instances an audio recording shall be made of the proceedings and such audio recording shall be archived in the same manner as video recordings of meetings, with the same level of public access.

1-10-50 Closed sessions and litigation reports.

- (A) Before any closed session, the City Council shall disclose on the agenda and verbally during open session the basis for the closed session.
- (B) Before any closed session, the City Council shall meet in open session for the purpose of taking public comment solely on the subject(s) of the Closed Session. Council minutes shall reflect the scope of individual comments.
- (C) Following the closed session, the City Attorney shall make a report in open session describing any final action taken as required by state law, as well as any other matter or statement the City Council directs the City Attorney to make.
- (D) When litigation involving the City is finally adjudicated or otherwise settled, the text and terms of any final judgment or settlement shall be disclosed, subject to state and federal confidentiality law limitations. The City Attorney will make reasonable efforts to disclose as much as legally permissible.
- (E) When settlements are authorized by the City Council at a Closed Session but are not reported out immediately following the end of the Closed Session, the City Attorney shall prepare a monthly report for the City Council Agenda identifying any settlement agreements entered into by the City.

1-10.060 Public access and comment.

- (A) Whenever the number of attendees at a City Council meeting exceeds the legal capacity of the meeting room as determined by the Fire Marshall, any public address system used to amplify sound in the City Council Chambers shall be extended by

supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent suitable location. If there be no public address system, or if supplementary speakers are not available at the time, the meeting shall be adjourned until this is appropriately addressed.

- (B) Every agenda for regular meetings of the City Council shall provide, no earlier than 5:00pm and again at the end of the meeting, an opportunity for members of the public to directly address the City Council on items of interest to the public that are within the City Council's subject matter jurisdiction, but not on the meeting's agenda. No action or discussion, however, shall be undertaken on any item not appearing on the agenda unless the action or discussion is otherwise authorized by Sections 1-10.030.
- (1) The first public comment period on non-agenda items shall begin no earlier than 5:00 p.m. but shall begin as close to 5:00 p.m. as is feasible. This first comment period will be limited to twelve speakers selected randomly by the City Clerk.
 - (2) Speakers who do not have an opportunity to speak during the first public comment period shall be allowed to make public comment under the second public comment period at the end of the meeting.
 - (3) Speakers who have an opportunity to speak during the first public comment period may not make additional comments during the second public comment period.
- (C) In connection with each item listed on an agenda for a regular or special meeting an opportunity shall be provided for members of the public to directly address the legislative body concerning that item before the legislative body takes action. Public comments on closed session items shall be taken before the closed session is convened.
- (D) Except at meetings at which fees are adopted as part of the annual budget adoption, no public hearing may commence earlier than 5:00 p.m. or later than 9:00 p.m. unless there is a legal necessity to act, to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing. When possible, the Mayor should strive for time-certain scheduling of public hearings, and should prioritize public hearings over non-urgent report items.
- (E) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.

- (F) All staff reports, staff presentations, comments from applicants and appellants regarding the agenda item, and Council questions will be presented before the public has an opportunity to speak on the item so as to provide the fullest opportunity for public input on the full scope of issues before the City Council.

- (G) To enhance public knowledge of the City’s policies and better inform the public as to the public’s important role in City government, the Office of Community Engagement and the City Clerk’s Office shall prepare a Citizens Guidebook setting forth written guidelines for members of the public explaining City policies regarding public participation and public comment. The Citizens Guidebook shall include an outline of City government structure, organization, responsibilities, and basic functions, as well as local government terms and definitions, and how to participate in local government activities, meetings, and proceedings. This guidebook will be made available in English and Spanish on the City’s website.

1-10.070 Meeting minutes.

City Council and its standing subcommittees shall record the minutes for each regular and special meeting convened under the provisions of this ordinance. At minimum, the minutes shall state the time the meeting was called to order, the names of the members attending the meeting, a one-sentence summary of, and roll call vote on, each matter considered at the meeting, the time the local body began and ended any closed session, those members of the public who spoke on each matter if the speakers identify themselves and a brief description of their comments, and the time the meeting was adjourned. Public comment speaker cards shall have an option for a one-sentence description of the comments, which the clerk shall use to create a brief description of the comments for inclusion in the final minutes. The final closed captioning of the meeting video will be publicly available in English and Spanish. If video of the meeting is not available, the draft minutes of each meeting shall be available for inspection and copying upon request no later than 15 business days after the meeting. If video of the meeting is available, the 15 business day deadline does not apply. The officially approved minutes shall be available for inspection and copying upon request no later than five business days after the meeting at which the minutes were approved. Meeting minutes will be posted via the City’s website once approved.

Article III. Public Records

1-10.080 Release of public records.

Release of public records by any body or department of the City, whether for inspection of the original or by providing a copy shall be governed by the California Public Records Act (Government Code section 6250, et seq.) in any particulars not addressed by this chapter.

1-10.090 Responsibilities of staff.

- (A) The City Clerk shall be the City Public Records Coordinator and each department head shall designate a Department Representative who shall ensure that all department staff who have contact with the public are prepared to provide public records to the public in accordance with this Chapter.
- (B) Each Department Representative shall coordinate with the City Attorney's Office and the Public Records Coordinator to ensure compliance with this chapter and any related policies and procedures adopted by the City Council or City Manager.
- (C) Requests for public records can be submitted in person, via phone, or in writing. If the request contains an email address, the Public Records Coordinator or responding department must acknowledge the request via an email reply to the sender. Whenever possible, the Public Records Coordinator or responding department will provide an estimate of the time needed to provide the records requested.
- (D) At least once a year, and as otherwise requested by the City Council, the Public Records Coordinator shall prepare a tally and report of all record requests brought before it. The report shall, at a minimum, identify the total number of requests, nature of the requests, number of requests fulfilled, number of requests unfilled, and the reason they were not filled.
- (E) The Public Records Coordinator shall ensure that staff is trained regarding their obligations under this chapter.
- (F) The Community Engagement Director shall make every effort to inform and educate the public about the provisions of this chapter through the creation of educational materials, such as a Citizen's Guidebook, the Citizen's Academy, and through use of social media, television, radio, written efforts, presentations, etc.

1-10.100 Disclosure of records.

- (A) The Public Records Coordinator and Department Representatives shall respond to requests for public records as promptly as possible.
- (B) At a minimum, a request to inspect or obtain copies of public records submitted to any department or legislative body shall be responded to within ten (10) calendar days to advise whether the City has records that it will provide or that there is a legal basis to withhold disclosure of the records, unless within that ten day period, the requestor is advised in writing that additional time is needed based on:
 - (1) The need to search for and collect the requested records from facilities 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 with another department or agency that has substantial interest in the response to the request.
 - (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.
- (C) The response shall provide an estimate as to when records will be available for inspection and the cost for copies of such records.
 - (D) The person seeking the information need not state a reason for making the request or the use to which the information will be put, but may be advised that providing such information may help the City assist the person in finding all documents responsive to the request.
 - (E) While not required, a written request is recommended in order to create a paper trail for the convenience and reference of the requestor and the City. The Public Records Coordinator and each Department Representative shall provide a form for this purpose.
 - (F) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is readily available to or easily generated by the department, its officers or employees, including disk, tape, printout, or monitor at a charge no greater than the cost of the media on which it is duplicated.
 - (G) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) to the extent not addressed by this ordinance.
 - (H) The City's failure to follow these administrative procedures will not result in the invalidation of any action taken by the City.

1-10.110 Website information.

- A. Open by Default.
 - a. All data generated by the City and its departments shall be open to public review unless the data contain information exempt from disclosure under the Public Records Act or any other federal, state or local law, rule or regulation. The department generating the data

is required to review the data's eligibility for disclosure and to maintain currency with the public disclosure requirements of this section.

- B. The City Clerk's Office shall post on the City's website and make available in each department (i) a Citizen's Guide to Public Information that explains how to make a public records request, and (ii) a Records Index that identifies the general categories of records that are maintained by City departments and divisions.

- C. Open Data Portal.
 - a. Santa Rosa is committed to increasing transparency through timely and consistent publication of data generated by City Departments.
 - b. Open and accessible government is fundamental to successful representative democracy because it empowers the public to participate in governance by providing easy and open access to maximum public data and information.
 - c. A single web portal incorporated into the City's new website shall be established and maintained by or on behalf of the City; administered by the Information Technology Department
 - d. Any dataset made available on the City's Open Data Portal shall use a format that permits automated processing of such data and shall be accessible to external search capabilities.
 - e. Each department will designate a Data Coordinator who will oversee implementation of and compliance with this section.

1-10.120 Appeals regarding requests for public records.

- A. If a person or entity who has submitted a public records request believes that the Public Records Coordinator or Department Representative has improperly refused, failed to comply, or incompletely complied with the request, the person or entity making the request may submit a complaint form to the City Clerk for a determination whether the requested record is subject to disclosure or not. After consultation with the City Attorney's Office, and no later than 10 calendar days after receipt of the complaint form, the City Clerk shall inform the complainant of its determination whether the requested record, or any part of the requested record, is subject to disclosure. This determination shall be in writing. If the City Clerk determines that the record is disclosable, the Public Records Coordinator or Department Representative shall produce the record.

- B. In any court proceeding subsequently filed pursuant to this chapter or the California Public Records Act (Government Code 6250 et seq), there shall be a presumption that the record sought is disclosable, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

- C. At least once a year, and as otherwise requested by the City Council, the Public Records Coordinator shall prepare a tally and report of every appeal (complaint) filed under this section since the time of its last tally and report. The report shall, at a minimum, identify for each appeal the record or records sought, the custodian of those records, the ruling of the City Clerk, whether the City Clerk's ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court proceeding related to any appeals during that period. At the request of the City Council, the report shall also include copies of all rulings made by the City Clerk.

Article IV. Enforcement Provisions

1-10.130 Primary regulatory and enforcement body.

The primary regulatory and enforcement body of the Open Government Ordinance shall be the City Council via the City Manager's and City Attorney's Offices.

1-10.140 Complaint procedures regarding alleged violations of the Open Government Ordinance.

- (A) A complainant must file a complaint no more than thirty (30) business days after an alleged violation of the Open Government Ordinance.
- (B) A person who makes more than three (3) complaints in one (1) 12-month period that are determined by the City Manager to be unfounded shall be prohibited from making a complaint for one (1) year.
- (C) Upon filing of an official complaint form (including submittal of all evidence) with the City Clerk's Office, the complainant shall appear at a hearing before the City Manager, scheduled no later than ninety (90) calendar days after the City Clerk's receipt of the complaint form. During this hearing the City Manager will provide the parties with the chance to present evidence and make arguments. The City Manager will render a formal written decision on the matter within thirty (30) calendar days of the hearing.

1-10.150 Cure and correction.

Nothing in this article shall prevent a body from curing or correcting an action.

1-10.160 Annual public report.

The City Attorney's Office shall prepare an annual report to be placed on the City's website and made generally publicly available in printed form of alleged violations of this chapter brought to its attention during the previous calendar year. The report shall identify the nature of the alleged violation, the relief sought by each petition, the

disposition or current status thereof and the location of all records relevant to each petition. With advance notice to the City Clerk's Office, the City Attorney's Office may also request a tally of records requests for statistical or comparative purposes.

1-10.170 Relation to other City ordinances.

Whenever a conflict arises between the provisions of this Chapter and of other City Ordinances, the requirement that would result in greater or more expedited public access to public information shall govern, subject to the provisions of federal and state law."

Section 2. Environmental Determination. The Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061(b)3 in that the Council finds there is no possibility that the implementation of this ordinance may have significant effects on the environment.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 4. Effective Date. This ordinance shall take effect on July 1, 2021.

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Section 5. Six and Twelve Month Review. At or about six months and again at or about twelve months after the effective date of this ordinance, the City Manager shall provide a report to Council on the implementation and impacts of the ordinance. At those times, the City Manager shall offer any recommended revisions or refinements to ensure that the goals of the ordinance are met most efficiently and effectively.

This ordinance was introduced by the Council of the City of Santa Rosa on _____, 2020.

IN COUNCIL DULY PASSED AND ADOPTED this _____ day of _____, 2020.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____ APPROVED: _____
City Clerk Mayor

APPROVED AS TO FORM:

City Attorney