



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE: Adoption of a Resolution authorizing a continuous destruction schedule for public records held by the Police Department.

RECOMMENDED MOTION: Adopt a Resolution of the City Council of the City of Sausalito authorizing a continuous destruction schedule for public records held by the Police Department.

SUMMARY

The Police Department has public records in its possession dating back several years. The department has limited storage room in its current facility for these records. Police department personnel are currently making a concerted effort to properly dispose of these records to not only free up space in its current location but to also limit the amount of records that must be brought to the new public safety facility. Department personnel also desire to be organized and efficient in the operation of the new facility and believe that a continuous and on-going records destruction plan to be the best way to achieve that goal.

BACKGROUND

The Police Department's current Records Retention Schedule was last approved by the City Council in February of 1998. On October 2, 2007, the City Council approved a City Records Retention Schedule that did not include the Police Department's Records. At that time the City Council directed staff to bring back any proposed revisions for City Council consideration at a later date. The proposed Resolution and the Attachments are the Police Department's recommendation action.

ISSUES

None.

Item #: 489
Meeting Date: 9-1-09
Page #: 1

FISCAL IMPACT

Current costs to shred confidential documents are between \$6 and \$7 per paper box. The Police Department will have the equivalent of approximately 50 boxes to destroy initially. After that, the cost of on-going and continuous shredding will be minimal. These costs are covered in the current Police Department budget.

STAFF RECOMMENDATIONS

Adopt the proposed resolution.

ATTACHMENTS

- 1. A Resolution of the City Council of the City of Sausalito authorizing a continuous destruction schedule for public records held by the Police Department.
 - Exhibit A. The full explanation of the Records Destruction Schedule for the Sausalito Police Department
 - Exhibit B. The list of various California Government Codes and Statutes used in compilation of the criteria contained in Exhibit A.
 - Exhibit C. The Police Department Records Retention Schedule approved by the City Council in 1998.

PREPARED BY:

REVIEWED BY (Department Head):



 John Rohrbacher, Captain

 Scott Paulin, Chief of Police

REVIEWED BY:

SUBMITTED BY:

 Mary Wagner, City Attorney



 Adam Politzer, City Manager

Item #: 489
 Meeting Date: _____
 Page #: 2

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF SAUSALITO
AUTHORIZING A CONTINUOUS DESTRUCTION SCHEDULE
FOR PUBLIC RECORDS**

WHEREAS, on October 2, 2007, the Sausalito City Council adopted Resolution No. 4918, A Resolution of the City Council of the City of Sausalito Adopting A Records Retention Schedule and Authorizing the Destruction of Records Pursuant to the Records Retention Schedule in Compliance with the California State Archives Records Retention Guidelines; and

WHEREAS, at the time Resolution 4918 was adopted, the Police Department Records Retention and Destruction Schedule from February 1998 was included as Attachment 2 with any changes to be brought back to the City Council at a later time; and

WHEREAS, the Sausalito Police Department has limited storage space in its current location and is in possession of records and accompanying property/evidence items going back for several years and wishes to destroy these records so as to not have to move them to or store them in the new police department building; and

WHEREAS, the Chief of Police, as Head of the Department and Custodian of Public Records, is authorized by California Government Code 34090 to direct and order destruction of obsolete records and documents with limited exceptions; and

WHEREAS, the City Attorney has approved the attached exhibits A, B, and C, which delineate guidelines for a continuous destruction schedule for public records in accordance with all existing Government Codes and Statutes attached hereto; and

WHEREAS, the City Attorney has agreed that this retention and destruction schedule may be conducted as an ongoing process; and

WHEREAS, this Resolution includes current regulations and legislation related to Public Records retention and destruction; and

WHEREAS, this Resolution and its Attachments are meant to supplant Resolution 4918; and

WHEREAS, this Resolution will act as a living document incorporating any revisions, additions, or deletions of Government Codes and Statutes pertaining to record retention or destruction as they may be enacted, without requiring formal submission and ratification by the Council;

NOW, THEREFORE , BE IT BE RESOLVED that the Chief of Police is authorized, with the approval of the City Council of the City of Sausalito and the previous approval of the City Attorney, to begin implementation of this continuous and on-going destruction schedule of public records.

489
3

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Sausalito on the _____ day of _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

MAYOR OF THE CITY OF SAUSALITO

CITY CLERK

489
4

EXHIBIT A
RECORDS DESTRUCTION SCHEDULE
CITY OF SAUSALITO POLICE DEPARTMENT

California State law requires the collection and processing of certain records. As certain documents become less valuable as an information resource with the passage of time, their continued retention inhibits an agency's ability to reference more current and valuable information sources.

The Records Unit is responsible for receiving, processing, retrieving, storing and purging these documents in accordance with California law and Department General Orders.

The Records Supervisor is responsible for accurate filing, proper storage, timely purging and security of all Department records.

The intent of this order is to provide requirements for retention and destruction of these documents, using those sections of California State law that mandate certain time frames for specified types of records as guideline.

If the Sausalito Police Department is aware of any civil or criminal action that has been filed with regards to any report or record, that report or record shall be maintained until such action has been adjudicated.

A list of all police reports that are destroyed will be compiled and retained for reference. Any evidence or property associated with the destroyed reports will be destroyed in the proper manner. The record destruction process will include updating any automated records management systems to reflect destruction of pertinent information as noted in Exhibit A.

The following records shall be maintained in the manner noted below, unless otherwise excepted:

- A. Reports/documents maintained indefinitely:**
- a. Missing Persons not cleared
 - b. Homicide Reports
 - c. Active and inactive 290 registrant files, except those records falling under PC290(d)(1) for juveniles paroled after Jan. 1, 1986
 - d. Misdemeanor or felony accident reports involving on-duty employees
 - e. Offenses punishable by death, life without parole (including juvenile offenders) or embezzlement of public money (PC 799)
 - f. Juvenile records pertaining to offenses enumerated under WIC 707(b), pursuant to Proposition 21 provisions
 - g. Felony reports involving DNA evidence will be retained in accordance with California Cold Hit Program guidelines or until terms of incarceration are met, whichever is applicable (PC803(h))
 - h. Auction, drug burns, and gun trade documentary cases
 - i. Kidnapping for ransom
 - j. Falsification of public records
 - k. Reports with property outstanding in DOJ/NCIC
 - l. 11590 H&S drug registrants (terminated by court order)

The following records shall be retained for the length noted and then destroyed:

- B. Employee Background Files**
All components of pre-employment background files of applicants not hired shall be retained for five years from the date of completion. Background files of current employees shall be retained for five years after the date of separation.
- C. Employee Personnel Files**
All components of a current or former employee's personnel file, including employee training records, shall be retained for a period of five years from the date of separation.

- D. Internal Investigation/Citizen Complaint Investigation Files**
All components of internally generated investigations and investigations related to citizen complaints shall be retained for a period of five years from the date of the complaint, regardless of the results of the investigation (except if an internal investigation or citizen complaint file is destroyed, then all reference to either one in an employee's personnel file shall be removed).
- E. Accident Review Board Reports Involving Employees**
All Accident Review Board reports shall be retained for a period of five years from the date of the incident, regardless of the results of the investigation, except if an Accident Review Board report is destroyed, then all reference to it in an employee's personnel file shall be removed.
- F. Recordings of Audio (telephone and radio) and Video Mediums**
Recordings of telephone and radio communications shall be retained for one hundred and eighty (180) days, except if any recording is evidence in any potential, pending or active criminal or civil legal action, known to Sausalito Police Department, in which case, it shall be preserved for one hundred (100) days after the conclusion of the action (34090.6 G.C.). Video recordings that are evidence in any investigation or claim filed or any pending litigation known to Sausalito Police Department will be preserved until the litigation is resolved or statute of limitations for the offense has expired.
- G. The following documents shall be retained for two years:**
1. Citations for parking violations
 2. Parking records (payments, reports, permits, hearings, misc.)
 3. Miscellaneous correspondence not related to other public records
 4. Records for expired licenses and permits
 5. Repossession notices
 6. Daily activity records, shift logs, and press logs/releases
 7. All index cards and logs related to destroyed case documents
 8. Field interview cards and field interview reports
 9. Duplicates of all reports, when the duplicates are no longer needed (including copies of reports from another criminal justice agency)
 10. Audit logs for manual/automated criminal history teletypes or printouts
 11. Reports of lost and found items, which have been lawfully disposed of
 12. Abandoned vehicle reports
 13. Courtesy/warning citations
 14. Applications for employment
 15. Time off slips
 16. Works schedules/rosters
 17. Incident reports
 18. Minutes of staff meetings
 19. Miscellaneous traffic reports
 20. Training bulletins (outdated and officially rescinded)
- H. The following documents shall be retained for three years:**
1. Purchase orders
 2. Retainable arrests which are later termed "Detention Only" per 849(b) PC
- I. The following documents shall be retained for five years:**
1. Administrative reports
 2. Arson registrants (terminated upon Court Order)
 3. Budget worksheets/miscellaneous budget records
 4. Chief's correspondence
 5. Department memorandums and notices
 6. Payroll records
 7. Sick and overtime records
 8. Expired TRO's
 9. Misdemeanor citations (see L below for exception)
 10. Missing persons reports which have been cleared
 11. Moving violation citations
 12. Municipal code violations

4B9
6

- J. The following documents shall be retained for ten years:**
1. Case report ledgers
 2. Department statistics – Bureau of Criminal Statistics
 3. Investigative files
- K Traffic collision reports, which are not the basis of criminal or civil action, shall be purged after five years. Traffic accident reports with a fatality shall be kept ten years.**
- L The following narcotic violation arrests shall be purged two years after arrest or conviction if no civil action is pending:**
1. Reports and citations for H&S 11357(b), (c), (d), or (e)
 2. Reports and citations for H&S 11360(b)
- M All crime and supplemental reports for infractions and misdemeanors will be destroyed after five years and all crime and supplemental reports for felonies will be destroyed after seven years providing:**
1. They do not relate to an unadjudicated arrest, except for Section I above
 2. They do not relate to unserved warrants
 3. They do not involve identifiable items which have not been recovered
 4. They do not relate to 290 PC or 457.1 PC or 11590 H&S registrants
 5. They do not relate to a criminal death case
 6. The cases are not presently involved in either civil or criminal litigation
 7. They do not involve sealed records for any person found factually innocent under section 851.8 PC
 8. They do not relate to a City of Sausalito employee
- Exception:** Certain crime reports may be delayed in destruction based on Penal Code sections governing statutes of limitation for commencement of prosecution:
1. **800 PC:** Offenses punishable by imprisonment for 8 years or more shall be kept for 6 years after offense was committed
 2. **801 PC:** Offenses punishable by imprisonment in state prison, such as for fraud or elder abuse convictions, shall be kept for 6 years after offense was committed
 3. **802 PC:** Offenses not punishable by death or imprisonment; misdemeanor violation of 647.6 or 647 (a) shall be kept for 2 years after offense was committed
- N. Records for registrants covered by 11590 H&S shall be destroyed five years after completion of probation or parole when all requirements are completed.**
- O. Juvenile records will be purged as noted:**
1. Sealed juvenile records for 851.8 PC, 1203.4 PC, and 781(a) W&I will be destroyed five years after termination of juvenile court jurisdiction based on a destruction petition from the court.
 2. Sealed juvenile records pursuant to 290(d)(1), when offender was paroled or discharged after January 1, 1986, will be purged five years after termination of juvenile court jurisdiction.
 3. All other sealed juvenile records will be kept for five years and then purged.

EXHIBIT B

Various codes and statutes used in compilation of the criteria contained in Exhibit A.

Government Code 34090: Destruction of City Records; excepted records; construction.

"Unless otherwise provided by law, with the approval of the legislative body by resolution and the written consent of the agency attorney, the head of a city department may destroy any city record, document, instrument, book, or paper, under his charge, without making a copy thereof, after the same is no longer required."

Those records not authorized for destruction under 34090 G.C. are:

- a. Records affecting title to real property or liens thereon;
- b. Court records;
- c. Records required to be kept by statute
- d. Records less than two (2) years old;
- e. The minutes, ordinances, or resolutions of the legislative body or of a city board or commission

This section shall not be construed as limiting or qualifying in any manner the authority provided in Section 34090.5 for the destruction of records, documents, instruments, books and papers in accordance with the procedure therein prescribed."

Government Code 34090.5: Destruction of Records; conditions.

"Notwithstanding the provisions of Section 34090, the city officer having custody of public records, documents, instruments, books, and papers, may without the approval of the legislative body or the written consent of the city attorney, cause to be destroyed any or all the records, documents, instruments, books, and papers if all the following conditions are complied with:

- a. The record, documents, instrument or paper is photographed, microphotographed, or reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data-processing system, recorded on optical disk, reproduced on film or any other medium which does not permit additions, deletions, or changes to the original documents, or reproduced on film, optical disk, or any other medium in compliance with the minimum standards or guidelines, or both, as recommended by the American National Standards Institute or the Association for information and Image Management for records of permanent records or nonpermanent records, whichever applies.
- b. The device used to reproduce such record, document, instrument or paper or film, optical disk or any other medium is one which accurately and legibly reproduces the original thereof in all details and which does not permit additions, deletions, or changes to the original document images.
- c. The photographs, microphotographs, or other reproductions on film, optical disk, or any other medium are made as accessible for public reference as the original records were.
- d. A true copy of archival quality of the film, optical disk, or any other medium reproductions shall be kept in a safe and separate place for security purposes.

However, no page of any record, paper, instrument, or document shall be destroyed if any page cannot be reproduced on film with full legibility. Every unreproducible page shall be permanently preserved in a manner that will afford easy reference.

For the purposes of this section, every reproduction shall be deemed to be an original record and a transcript, exemplification, or certified copy of any reproduction shall be deemed to be a transcript, exemplification, or certified copy, as the case may be, of the original."

Government Code 34090.6: Destruction of recorded radio and telephone communications.

"Notwithstanding the provisions of Section 34090, the head of a department of a city and/or county, public communications center, or the head of a special district, after one year, may destroy recordings of routine video monitoring, and after 100 days may destroy recordings of telephone and radio communications maintained by the department or the special district. This destruction shall be approved by the legislative body and the written consent of the agency attorney shall be obtained. In the event that the recordings are evidence in any claim filed or any pending litigation, they shall be preserved until pending litigation is resolved.

For purposes of this section, "recordings of telephone and radio communications" means the routine daily taping and recording of telephone communications to and from a city, county, city and county, or special district, department, and radio communications relating to the operations of the departments or special districts.

For purposes of this section, "routine video monitoring" means videotaping by a video or electronic imaging system designed to record the regular and ongoing operations of the departments or districts described in subdivision (a), including mobile in-car video systems, jail observations and monitoring systems and building security taping systems."

Government Code 34090.7: Duplicate records less than two (2) years old; destruction; video recording media.

"Notwithstanding the provisions of Section 34090, the legislative body of a city may prescribe a procedure under which duplicates of city records less than two years old may be destroyed if they are no longer required.

For purposes of this section, video recording media, such as videotapes and films, and including recordings of "routine video monitoring" pursuant to Section 34090.6, shall be considered duplicate records if the city or county keeps another record, such as written minutes or an audiotape recording, of the vent that is recorded in video medium. However, a video recording medium shall not be destroyed or erased pursuant to this section for a period of at least 90 days after occurrence of the vent recorded thereon."

Health & Safety Code 11361.5(a): Destruction of arrest and conviction records; applicable offenses; method; records not applicable; costs.

"Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of subdivision (a), (b), (c), (d) or (e) of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest, if there was no conviction, except with respect to a violation of subdivision (e) of Section 11357 the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section ..."

Health & Safety Code 11361.5(c): Method of destruction.

"Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the records pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed."

Welfare & Institutions Code 781(a): Petition for sealing of records; notice; hearing; grounds for and effect of order; inspection and destruction of records; disclosure in criminal proceeding.

"...In any case in which a ward of the juvenile court is subject to the registration requirements set forth in Section 290 of the Penal Code, a court, in ordering the sealing of the juvenile records of the person, also shall provide in the order that the person is relieved from the registration requirements and for the destruction of all registration information in the custody of the Department of Justice and other agencies and officials..."the court shall not order the person's records sealed in any case in which the person has been found by the juvenile court to have committed an offense listed in subdivision (b) of Section 707 when he or she had attained 14 years of age or older. Once the court has ordered the person's records sealed...The court shall send a copy of the order to each agency and official named therein, directing the agency to seal its records and stating the date thereafter to destroy the sealed records..."

Welfare & Institutions Code 781@3(d):

“...the court shall order the destruction of a person’s juvenile court records that are sealed pursuant to this section as follows: five years after the records were ordered sealed, ...or when the person...reaches the age of 38...except if the subject of the record was found to be a person described in Section 602 because of the commission of an offense listed in subdivision (b) of Section 707, when he or she was 14 years of age or older, the record shall not be destroyed...”

Penal Code sections cited for Statute of Limitations for records retention:

- 799** Offenses punishable by death or life imprisonment; embezzlement of public money; application to minors.
- 800** Offenses punishable by imprisonment for eight years or more
- 801** Offenses punishable by imprisonment for 6 years or more
- 801.5** Fraud; breach of fiduciary duty; official misconduct
- 801.6** Elder or dependent adult offenses

- 802** Offenses not punishable by death or imprisonment; misdemeanor violation of Section 647.6 or former Section 647(a); sexual offense of physician, surgeon or psychotherapist with patients

- 803(h)** Toll or extension of time periods referenced to Cold Hit Program
- 804** Commencement of prosecution for an offense

- 805** Determination of applicable time limitation
- 805.5** Operative date; application of chapter

- 832.5** Procedure for investigation of citizen’s complaints against personnel; investigation; description of procedure; retention of records.

- | | |
|--------------|---|
| PC 186.32(c) | Gang registrants |
| PC 290(d)(1) | Registration of Sex Offenders |
| PC 290(d)(4) | Juvenile registration |
| PC 851.8 | Sealing adult arrest record – factual innocence |

Health & Safety Codes cited:

- | | |
|----------------|---|
| H&S 11361.5(a) | Violation of H&S11357(b),(c),(d),(e) or violation of H&S 11360(b) |
| H&S 11361.5(b) | Violation of 11357, 11364, 11365, and 11550 |
| H&S 11361.5(c) | Definition of method of destruction |
| H&S 11357(e) | Possession of marijuana by juvenile |

(Welfare & Institution Codes):

Gang Violence and Juvenile Crime Prevent Act – 1998: Proposition 21

WIC 707(b) Retention of certain juvenile records, involving offenses of:

1. Murder or attempted murder
2. Assault with firearm or by means of force likely to produce great bodily injury
3. Arson as provided in PC 451(b)
4. Robbery
5. Rape with force or violence
6. Sodomy by force, violence
7. Lewd or lascivious acts as provided in PC288(a)
8. Kidnapping for ransom or purpose of robbery with bodily harm
9. Discharging firearm into inhabited or occupied building
10. Any offense in Section PC1203.09, 12022.5 or 12022.53

- | | |
|-----------------|---|
| WIC 781(a) | Petition for sealing juvenile records |
| WIC 826(a), (b) | Release, destruction, reproduction of court records |

489
11

EXHIBIT C

290 PC Registrants (terminated upon Court Order)	5 years
Abandoned Vehicle Reports	2 years
Accident Reports:	
Fatalities	10 years
All others	5 years
Administrative Reports	5 years
Arson Registrants (terminated upon Court Order)	5 years
Auction, drug burns and gun trade documentary cases	Indefinitely
Background Files	5 years
Budget Worksheets/Miscellaneous Budget Records	5 years
Case Report Ledgers	10 years
Chief's Correspondence	5 years
Courtesy Reports for other Agencies	5 years
Courtesy Citations	2 years
Daily Logs	2 years
Department Memorandums and Notices	5 years
Department Statistics - Bureau of Criminal Statistics	
10 years	
Employment Records:	
Applications for Employment	2 years
Background Investigation Files	5 years
Employee Complaint Files	5 years
Payroll Records	5 years
Personnel Files (upon separation of employment)	5 years
Sick and Overtime Records	5 years
Time Off Slips	2 years
Work Schedules	2 years

Evidence Photographs	
Evidence Tags	
Expired TRO's	5 years
Falsification of Public Records	Indefinitely
Felony Crime Reports Providing:	7 years
There is no outstanding warrant related to the Report	
There is no death connected with the Report	
There is no property outstanding in DOJ or NCIC	
It does not involve Civil or Criminal Litigation	
It is not classified under Sections 290, 799 and 800 PC or 11850 H&S	
Gun Registrations	Indefinitely
Incident Reports	2 years
Investigative Files	10 years
Kidnapping, Treason, and all Federal Crimes without Statute of Limitations	Indefinitely
Kidnapping for Ransom	Indefinitely
Lost Property Reports	2 years
Minutes of Staff Meetings	2 years
Miscellaneous Complaint Reports	5 years
Miscellaneous Correspondence	2 years
Miscellaneous Traffic Reports	
2 years	
Misdemeanor Citations	5 years
(except 11357(b), c, (d), (e) or 11360 (b) H&S purged per 11361.5 H&S	
Misdemeanor Crime Reports Providing:	5 years
There is no outstanding warrant related to the Report	
There is no property outstanding in DOJ or NCIC	
It is not involved in Civil or Criminal Litigation	
It does not involve a City of Sausalito Employee	
There is no previous destruction order from a judge pursuant to 851.8 PC	

4/3/14

Missing Persons (not located)	Indefinitely
Missing Persons Reports which have been cleared	5 years
Moving Violation Citations	5 years
Municipal Code Violations`	5 years
Murder	Indefinitely
Narcotics Registrants (terminated by Court Order)	Indefinitely
Officer Complaint Files	5 years
Parking Citations	2 years
Parking Records (Payments, Reports, Permits, Hearings, Misc.)	2 years
Purchase Orders	3 years
Records of Expired Licenses and Permits	2 years
Repossession Notices	2 years
Retainable Arrests which are later termed "Detention Only" per 849(b) PC (as of date of detention)	3 years
Sealed Juvenile Records	5 years
Training Bulletins (Outdated and Officially Rescinded)	2 years

489
15