



AGENDA ITEM NO.10

CITY OF HAWTHORNE CITY COUNCIL AGENDA BILL

For the meeting of *January 11, 2022*
Originating Department: City Attorney

City Manager: *Vontray Norris*
Vontray Norris

Chief of Police: *Michael Ishii*
Michael Ishii

SUBJECT:

Resolution No. 8323, Authorizing the Destruction of Police Department Personnel Files- Internal Affairs Investigations, from January 01, 2016 to December 31, 2016, pursuant to Resolution No. 7170 and 8322 and California Penal Code §832.5(b) as amended and effective on January 1, 2022.

RECOMMENDED MOTION:

Staff recommends that Resolution No. 8323 be adopted.

DISCUSSION:

On April 22, 2008, the City Council adopted Resolution No. 7170, which establishes a records retention schedule for the City of Hawthorne and the procedures for the disposition of records pursuant thereto. On December 14, 2021, the City Council adopted Resolution No. 8322, which amends the retention schedule for police records in order to comply with the new provisions of Penal Code § 832.5. As of January 1, 2022, Penal Code §832.5(b) will provide that certain personnel records, including internal affairs investigations, shall be retained for a period of no less than 5 years for records where there was not a sustained finding of misconduct, and for not less than 15 years where there was a sustained finding of misconduct.

The Chief of Police requests authority to destroy personnel and internal investigation records from January 1, 2016 through December 31, 2016, pursuant to the provisions of Penal Code Section 832.5(b) as effective January 1, 2022. Resolution No. 8323 and its attached exhibits include the findings that all of the records are more than five years old and/or have been retained for the minimum retention period of 5 years as specified in Resolution No. 8322 and Penal Code Section 832.5(b), and that none of the records sought to be destroyed fall within the 15-year retention period. Resolution No. 8322 includes a determination that the records no longer have any administrative, legal, evidential, fiscal or research and historical value as required by revised Penal Code Section 832.5(b). The Resolution contains a detailed list of all of the records with a description sufficient for identification, including the year of the record and specific description of the record.

FISCAL IMPACT:

None.

NOTICING PROCEDURES:

72 hours posted notice pursuant to the Ralph M. Brown Act.

ATTACHMENT(S):

Resolution No. 8322

Resolution No. 8233

EXHIBIT A

REQUEST FOR DESTRUCTION OF RECORDS

Listed below is a detailed list of records for which I am requesting destruction. The list includes a description of each record sufficient for identification, including record series title and contents, record dates, retention requirements and destruction date. Unless otherwise directed, the method of destruction proposed is shredding.

I hereby certify that the records listed below are more than five years old and have been retained for the minimum retention period specified in Resolution No. 8322 and as required by Penal Code Section 832.5(b). I further certify that the records listed no longer have any administrative, legal, evidential, fiscal or research and historic value and do not affect the title to real property or liens thereon, are not court records, are not, to my knowledge, required to be kept further by a statute, are not the minutes, ordinances or resolutions of the City Council or any City board or committee, and are no longer required by the City. I request authority to destroy same pursuant to Section 34090 of the California Government Code.

Box No	Record Series Title & Contents	Retention Schedule Page Number	Dates of Records	Retention Destruction Requirements	Date of Destruction
1	Personnel Files Internal Affairs Investigations	Pg. 24 of 35 as Amended by Reso. No. 8322	01/01/2016 thru 12/31/2016	5 years PC 832.5(b)	01/2022

Michael Ishii, Chief of Police

Date

EXHIBIT B

DESTRUCTION LIST APPROVAL

Attached is a Request for Destruction of Records submitted by the Police Department, dated _____ requesting authorization to destroy the records described in the detailed list which is included with the (attached) request.

Pursuant to Hawthorne City Council Resolution No. 7170 and 8322, the types of records listed in the City's current records retention schedule are authorized for disposition as outlined in that schedule upon the written consent of the City Clerk and the City Attorney and approval by the City Council. The review by the City Clerk and the City Attorney must include the determination that the records requested for destruction no longer have any administrative value, legal value, evidential value, fiscal value, or research and historical value. The resolution also provides that the destruction of any record shall be by disposal, recycling, shredding or other effective method of destruction, as approved by the City Clerk. All records of a sensitive or confidential nature must be shredded, under the direct supervision of the City Clerk.

I have reviewed the list of records described in the attached request for destruction and have found the listed records to be in compliance with the established retention requirements in specified in Resolution Nos. 7170 and 8322. I have also determined that the subject records no longer have any administrative, legal, evidential, fiscal, or research and historical value. I hereby consent to their destruction and to the department-proposed method of destruction unless otherwise noted below.

City Clerk

Date

I have reviewed the list of records described in the attached request for destruction and have found the listed records to be in compliance with the established retention requirements. I have also determined that the subject records no longer have any administrative, legal, evidential, fiscal, or research and historical value. I hereby consent to their destruction.

City Attorney

Date

EXHIBIT C

CERTIFICATE OF DESTRUCTION

I hereby certify that the destruction of the records described in the attached list was approved by the Hawthorne City Clerk on (date) _____ and by the City Attorney on (date) _____ pursuant to the authority provided by Hawthorne City Council Resolution No. 7170 and 8322. These records were destroyed in my presence by placing providing these documents to South Bay Document Recycling and Destruction for shredding at their place of business.

City Clerk

Date

I hereby certify that, pursuant to the foregoing authority, the records described in the attached list as requested by the Police Department were picked-up by South Bay Document Destruction on (date) _____. I further certify that the method of destruction used was shredding by South Bay Document Destruction and that I or the Deputy City Clerk or the designated representative of the Chief of Police, supervised the destruction of said records by personally providing said records to the bonded South Bay Document Destruction employee to be shredded at their facility.

Signature

Title

Date

This certification must be completed and signed by the person supervising the destruction of records and the original form must be filed with the City Clerk to be maintained as a permanent record attached to the original Request for Destruction of Records and Destruction List Approval forms.

RESOLUTION NO. 8322

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAWTHORNE,
CALIFORNIA, REMOVING RESOLUTION NO. 5270 AND REPLACING IT WITH
RESOLUTION NO. 8322, AN UPDATED PROCEDURE FOR DESTRUCTION OF
POLICE DEPARTMENT BACKGROUND FILES AND RECORDS RETAINED
PURSUANT TO PENAL CODE SECTION 832.5**

WHEREAS, the City of Hawthorne is in need of a police record destruction procedure for background files and for internal investigation files which will facilitate retrieval of current records by purging obsolete records and which will reclaim badly needed storage space; and

WHEREAS, Government Code Section 34090 provides that the head of a city department may destroy certain city records, documents or instruments under his charge, without duplication, with the approval of the City Council by resolution and with the written consent of the City Attorney; and

WHEREAS, the City Council of the City of Hawthorne adopted Resolution no. 5270 on June 27th, 1983, (A Resolution of the City Council of the City of Hawthorne, California, Authorizing a Procedure for Destruction of Police Department Background Files and Internal Affairs Investigation Files) establishing a procedure for retention and destruction of records by the Hawthorne Police Department, including records retained pursuant to the former provisions of Penal Code Section 832.5, and

WHEREAS, recent legislative changes have been enacted that significantly alter the records retention requirements of Penal Code Section 832.5, and

WHEREAS, these recent legislative changes require the City of Hawthorne to revise its records retention policies for the Hawthorne Police Department,

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Hawthorne, California as follows:

SECTION 1. The City Council of the City of Hawthorne removes and replaces Resolution No. 5270 with Resolution No. 8322 to reflect the current law regarding the retention and destruction of background and qualification files, and records retained pursuant to revised Penal Code Section 832.5.

SECTION 2. The City Council of the City of Hawthorne hereby adopts the following policy with respect to background and qualification files and records retained pursuant to revised Penal Code Section 832.5 by the Hawthorne Police Department, said policy to be reviewed annually on the anniversary of the adoption of this resolution.

A. All records relating to the qualifications and background of unsuccessful applicants for employment with the Hawthorne Police Department shall be retained for five (5) years and subsequently be destroyed.

The retention period for each record described in this subsection shall commence on the date it was prepared or the date it came into possession of the Hawthorne Police Department, whichever is later.

B. All personnel records, including records relating to the qualifications and background of employees of the Hawthorne Police Department shall be retained for five (5) years from the date on which the employee to whom the record pertains resigns, retires or is terminated, or the date on which the record is prepared or the date on which the record comes into the possession of the Hawthorne Police Department, whichever is later, and shall subsequently be destroyed.

C. Subject to the provisions of Penal Code Section 832.5 as amended effective January 1, 2022, all personnel records that are maintained pursuant to this section shall be retained as follows:

Complaints and any reports or findings relating to these complaints, including all complaints and any reports currently in the possession of the department or agency, shall be retained for a period of no less than 5 years for records where there was not a sustained finding of misconduct and for not less than 15 years where there was a sustained finding of misconduct. A record shall not be destroyed while a request related to that record is being processed or any process or litigation to determine whether the record is subject to release is ongoing.

The retention period for each record described in this subsection shall commence on the date it was prepared or the date it came into possession of the Hawthorne Police Department, whichever is later.

SECTION 3. Prior to the destruction of any of the above described records, pursuant to Government Code Section 34090 the City Attorney shall give his written approval of said destruction on a form to be provided by the Hawthorne Police Department.

SECTION 4. This Resolution shall take effect immediately upon its adoption by the City Council, and the Clerk of the Council shall attest to and certify the vote adopting this Resolution.

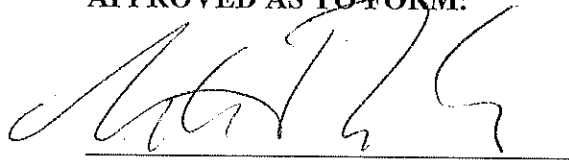
PASSED, APPROVED and ADOPTED this 14th day of December, 2021.

ALEX VARGAS, Mayor
City of Hawthorne, California

ATTEST

PAUL JIMENEZ
City Clerk

APPROVED AS TO FORM:



ROBERT M KIM
City Attorney

RESOLUTION NO. 8323

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAWTHORNE, CALIFORNIA, AUTHORIZING THE DESTRUCTION OF POLICE DEPARTMENT INTERNAL RECORD FILES FROM JANUARY 1, 2016 TO DECEMBER 31, 2016

WHEREAS, the retention of numerous records is unnecessary after a certain period of time for the effective and efficient operation of the government of the City of Hawthorne; and

WHEREAS, Government Code Section 34090 provides for the destruction of certain City records and documents with the approval of the legislative body by Resolution and the written consent of the City Attorney; and

WHEREAS, the City Council of the City of Hawthorne adopted Resolution No. 7170 (Retention Schedule for the Maintenance and Disposition of City Records, including Police Internal Affairs Investigation Files) on April 22, 2008; and

WHEREAS, On December 14, 2021, the City Council Adopted Resolution No. 8322 which amends the records retention schedule for police officer personnel and internal affairs records in order to comply with the revised provisions of Penal Code Section 832.5, and

WHEREAS, as of January 1, 2022, Penal Code §832.5 will provide that certain personnel records shall be retained for a period of no less than 5 years for records where there was not a sustained finding of misconduct, and for not less than 15 years where there was a sustained finding of misconduct; and

WHEREAS, as of January 1, 2022, Penal Code §832.5 provides that a record shall not be destroyed while a request related to that record is being processed or any process or litigation to determine whether the record is subject to release is ongoing shall not be destroyed; and

WHEREAS, the Chief of Police has requested the destruction of internal affairs records of police officers (either formerly or presently employed) after review of the records to comply with the provisions of the revised Penal Code §832.5(b) effective January 1, 2022, pursuant to a "Request for Destruction of Records" form (see sample attached as Exhibit "A"). This form includes the finding that all of the records are more than five years old and/or have been retained for the minimum retention period as specified in Resolution Nos. 7170 and 8322, and Penal Code §832.5(b) as effective January 1, 2022. This form also includes that after review of the records for compliance with Penal Code §832.5(b), it has been determined that the records no longer have any administrative, legal, evidentiary, fiscal or research and historical value. This form also contains a detailed list of all of the records with a description sufficient for identification, including the year of the record and specific description of the record. The City Clerk and the City Attorney have also authorized the destruction of records on a "Destruction List Approval" form (see sample attached as Exhibit "B"). This form includes the determination that the records no longer have any administrative, legal, evidential, fiscal, research or historical value. A "Certificate of Destruction" form shall be completed when the records have been destroyed. This form shall state the date of the destruction, the destruction method used and who

supervised the destruction. All three forms shall be maintained as permanent City records in the City Clerk's office.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hawthorne as follows:

Section 1. The records identified in Exhibit "A" are hereby ordered destroyed pursuant to Penal Code § 832.5 and Resolution Nos. 7170 and 8322.

Section 2. The City Clerk or the Chief of Police or his designee is hereby authorized and directed to destroy those items listed in Exhibit "A" attached hereto pursuant to the procedures established in Resolution No. 7170 and in conformance with the provisions of Penal Code Section 831.5

Section 3. The City Clerk shall certify to the adoption of this Resolution and shall cause this Resolution and this certification to be entered in the Book of Resolutions of the Council of the City.

Section 4. This resolution shall be in full force and effect immediately upon its passage and adoption thereof.

PASSED, APPROVED and ADOPTED this 11th day of January, 2022.

ALEX VARGAS, Mayor
City of Hawthorne, California

ATTEST

PAUL JIMENEZ
City Clerk

APPROVED AS TO FORM:



ROBERT KIM
City Attorney