


CITY COMMISSION POLICY

GRAND RAPIDS  MICHIGAN	NUMBER: 100-05	HISTORY
	DATE: June 19, 2007	FILE # DATE
	FILE NUMBER: 76352	
	DEPARTMENT: EXECUTIVE	

SUBJECT: CONFIDENTIALITY AGREEMENTS

PURPOSE: To establish a process under which confidentiality agreements may be authorized for use by elected officials, appointed officers and employees of the City of Grand Rapids in the furtherance of the development of governmental policy.

POLICY:

A. Background:

1. It is the general policy of the City of Grand Rapids to conduct its affairs in an open and transparent manner, consistent with the laws of the State of Michigan, and a policy which supports equal and fair treatment to all who have business with the City.
2. In the development of governmental policy (as defined herein) it is sometimes necessary to receive and consider certain written information from citizens and/or business entities which by its nature constitutes a trade secret or commercial or financial information which the possessor of such information is willing to share with officers and employees of the City, but not with the general public.
3. The Michigan Freedom of Information Act (MCL §15.231) has as its guiding policy that all persons are entitled to full and complete information regarding the affairs of government so that they may be fully informed and participate in the governmental process.

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4. Section 13 of the Freedom of Information Act recognizes that despite this over all general policy of full disclosure, certain written records and information in the possession of a public body may appropriately be exempt from disclosure.
 5. This Policy implements the criteria established by the Freedom of Information Act for receiving certain categories of written information under a promise of confidentiality from disclosure.
- B. Definitions: For purposes of this Policy and the CONFIDENTIALITY REQUEST FORM which accompanies it, the following words shall have the following definitions:
1. “Governmental Policy” means policy study or decision making by the City of Grand Rapids in any of the following fields:
 - Public Safety
 - Municipal Fiscal Policy
 - Municipal Employment Policy/Wages & Benefits
 - Economic Development of the Metro Area
 - Mass Transit
 - Legislative Policy
 - Municipal Planning & Zoning
 - Administrative Rule Making
 - Environmental Policy
 - Energy Policy
 2. “Commercial or Financial Information” means information that has not been publicly disseminated or that is unavailable from other sources, the release of which might cause the provider of the information significant competitive harm.

Such information is exemplified by, but not limited to:

- Business Plans
- Site Selection studies/data
- Financial feasibility studies
- Customer lists
- Banking information and references
- Credit reports
- Cash flow reports or projections
- Financial guarantees/letters of credit
- Market projections/strategies
- Lease projections/tenant lists
- Audits and accounting information

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Financial statements
Engineering studies
Wage and fringe benefit data
Property appraisals
Environmental studies
Architectural renderings

3. “Trade Secrets” means any valuable formula, pattern, device, process or other scientific or technical data or information that is used in one’s business and gives the possessor a competitive advantage over those who do not know or use the information.
4. “Elected Official” - For purposes of this Policy, “Elected Official” of the City of Grand Rapids shall mean the Mayor or President of the City Commission.
5. “Chief Administrative Officer” - For purposes of this Policy, the “Chief Administrative Officer” of the City of Grand Rapids shall mean the City Manager and Deputy City Manager.
6. “City Official” - For purposes of this Policy, “City Official” shall mean the Mayor, any City Commissioner, the City Comptroller and any appointed officer or employee of the City of Grand Rapids who has been requested to accept or review trade secrets or commercial or financial information under a promise of confidentiality.

C. Confidentiality Agreements:

1. No City Official acting in his or her official capacity shall offer to accept or review any written information provided by any person or business entity under a promise of confidentiality without compliance with this Policy. Any promise of confidentiality, written or oral, given without compliance with this policy, shall be considered ultra vires and void as against public policy.
2. Trade Secrets or commercial or financial information provided to the City of Grand Rapids or any City Official for use in developing governmental policy shall be kept confidential to the extent permitted by law if:
 - a) The information is submitted upon a promise of confidentiality by the City of Grand Rapids pursuant to the procedures outlined in this Policy.
 - b) The promise of confidentiality is authorized by the Chief Administrative Officer of the City or an Elected Official at the time the promise is made.

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- c) A description of the information received is recorded by the City official on the Request Form which is promulgated under this Policy, and filed with the City Clerk within 60 days of the information being received by the City. Copies of such Request Forms filed with the City Clerk shall be made available to a person upon request.
 - d) Any promise of confidentiality under this Policy shall not exempt from public disclosure under Section 13(l)(f) of the Freedom of Information Act that information which is submitted to the City as required by law or as a condition of receiving a City contract, license or other benefit.
3. Any City Official who desires to receive written information from any source which is a trade secret or commercial or financial information which the possessor of such information is willing to provide to the City under a promise of confidentiality shall fill out a CONFIDENTIALITY REQUEST FORM as attached to this Policy, and get the written approval to offer such promise of confidentiality by an Elected Official or the Chief Administrative Officer of the City [who is not the person seeking approval].
4. Any information so received by the City Official shall, to the extent permitted by law, be kept confidential and used only for the purpose of developing governmental policy.
5. If a written agreement of confidentiality has been requested by a provider of information, the City Official shall have such proposed agreement reviewed by the City Attorney or his or her designee and shall have the agreement approved as to form before executing. A copy of any such written confidentiality agreement shall be retained by the City Official with the confidential documents or information submitted.
6. All written information or documentation received under a promise of confidentiality shall be separately maintained in a file clearly marked "Confidential" and shall be separately and securely maintained by the City Official so long as it is in the possession of the City Official.
7. If a Freedom of Information Act request is filed with the City seeking records that have been provided to the City under a promise of confidentiality as herein authorized, the City shall notify the provider of such material of the FOIA request as soon as possible.

CONFIDENTIALITY REQUEST FORM

This REQUEST is being made under the provisions of City Commission Policy No. 100-05, "CONFIDENTIALITY AGREEMENTS".

The undersigned City Official has been requested to:

- provide a promise of confidentiality or
- execute a confidentiality agreement

With respect to certain trade secrets or commercial or financial information which will be submitted to the City for the purpose of assisting in the development of governmental policy. [See attached schedule]

Such information is being provided by:

- an individual:
- a business which is:
 - a d/b/a
 - a corporation
 - a partnership

I understand and represent that to the best of my knowledge such information to be provided and for which confidentiality is being requested, is not required by law to be submitted, nor is it being submitted as a condition of receiving a City contract, license or other benefit.

I have read City Commission Policy No. 100-05 and will abide by its terms and conditions in the handling of this information.

City Official: _____

Dated: _____ Position: _____

The request of the above-signed City Official to receive and consider trade secrets or commercial or financial information under a promise of confidentiality pursuant to City Commission Policy No. 100-05 is hereby approved not approved

Dated: _____

Authorizing Elected Official or
Chief Administrative Officer

[A copy of this Request Form shall be filed with the City Clerk not later than 60 days after receiving the written information for which it was issued.]

SCHEDULE OF INFORMATION RECEIVED

On _____ the undersigned received approval to promise confidentiality to _____ for the

[Name of provider of information]

purpose of receiving and reviewing certain information.

That information has been received and reviewed under the promise of confidentiality falls within the following categories: *[check all that apply]*

_____ Trade Secrets

Commercial and/or Financial Information

- _____ Business Plans
- _____ Site Selection studies/data
- _____ Financial feasibility studies
- _____ Customer lists
- _____ Banking information and references
- _____ Credit reports
- _____ Cash flow reports or projections
- _____ Financial guarantees/letters of credit
- _____ Market projections/strategies
- _____ Lease projections/tenant lists
- _____ Financial statements
- _____ Engineering studies
- _____ Wage and fringe benefit data
- _____ Property appraisals
- _____ Environmental studies
- _____ Architectural renderings
- _____ Other (describe) _____

Dated: _____

City Official

[A copy of this form must be filed with the City Clerk upon completion of review and consideration of the confidential material or 60 days from the approval for the promise of confidentiality was authorized, whichever is earlier.]