ADMINISTRATIVE CODE **CMD NUMBER 42**

CITY MANAGER'S DIRECTIVE-PROCEDURE **DATE: March 2, 2009**

CANCELS: None

SUBJECT : EMAIL RETENTION POLICY

POLICY : Electronic telecommunications systems (email, voice mail, fax systems, PDA's, the Internet, etc.) are tools to send or receive communications. City email is a business tool that should only be used to provide an efficient and effective means of intra-agency and inter-agency communications on City business.

Email is subject to the same laws, policies and practices that apply to other means of communication, including the California Public Records Act and discovery statutes. Therefore, employees must determine when these communications constitute records which should be retained and how to retain them.

City email and City email systems are for communication and not for the permanent storage of records. As such, City emails are generally deemed to be preliminary drafts, notes or interagency or intra-agency memoranda that are not retained by the City in its ordinary course of business and are therefore not public records. However, email that is a public record should be retained and accessible for the appropriate time period before destruction. Email which is public record is open to inspection by the public upon request, unless exempt from disclosure. See the list of Definitions at the end of this CMD for additional clarification.

RESPONSIBILITY : ACTION

Human Resources Department, IT Department, and Supervisors in all Departments

1. When an employee separates from City service (through retirement, resignation or termination), the HR Department will notify IT, and the email account for the departing employee will be set up as a "proxy" account to the separating employee's direct Supervisor. The Supervisor is responsible for ensuring all public records are properly managed, including, but not limited to, migrating appropriate records to a successor employee.

All personnel

2. All Email Users must manage their own email boxes following the below policies and procedures. The User's Supervisor, Division Manager and Department Head are responsible for ensuring that their employees are in compliance with this policy.

3. Email Inboxes and Sent Items folders (including their subfolders) shall be emptied on a regular basis, after records have been appropriately saved, as outlined below.

4. Email messages which contain any information relating to the conduct of the public's business that are prepared, owned, used or retained by the City may be deemed to be public records under the California Public Records Act. The email system is not to be used for long term storage.

5. Emails contained within a User's Inbox and Sent Items folders (including their subfolders) that are more than ninety (90) days old are considered duplicate copies or preliminary drafts and will be automatically deleted.

6. Users may place emails into User-created folders to organize email. Items in these folders may be public record and are discoverable through legal means.

7. Emails that are retained shall be maintained in accordance with the City's document retention manual and the User's Department Records Retention Schedule.

8. Unless set by the User to empty the Deleted Items (trash) folder upon exiting, the system will permanently delete email seven (7) days after items are placed within the Deleted Items (trash) folder.

9. Users' email mailbox storage capacity and the size of an outbound email in the email system (including file/document attachments) will be capped at a size/rate set by the IT Department.

10. All City policies (e.g. Use of City Resources, anti-harassment policies, etc.) apply to electronic media including email. Users must ensure that all communications are appropriate and comport with City policies.

11. Email from the City Attorney's Office or outside counsel should not be filed with public records. These emails may be subject to Attorney-Client and/or the Attorney Work Project privileges, and the contents should not be disclosed without first checking with the City Attorney's Office. Other exemptions may also apply.

12. If the City Attorney's Office informs departments and/or users that litigation, administrative or other proceedings exist, all emails, including duplicate copies, must be retained from the time of notice as they may be

subject to disclosure in the course of the proceeding.

IT Department

13. To instruct recipients of email sent from the City of Santa Clara about the City's policies, an email disclaimer will automatically be attached to every email leaving the City's system.

14. Frequently Asked Questions and Training Tips about the City's Email Retention Policy are available on the City's Intranet Site.

Cross-Reference:
CMD 13 – Public Record Requests
CMD 116 – Use of City Resources & Non-Confidential Nature of Information
CMD 131 – Equal Employment Opportunity Policy & Discrimination Complaint Procedure

Definitions:

A. "Emails" are messages sent and received electronically through an email system and also known as electronic mail. Messages include the text of the email, along with any metadata or attachments affixed thereto.
B. "Duplicate copy" is an email on which the recipient is listed as a "cc:" (copied recipient), or which another department or employee is responsible for the record's retention.
C. "Public records" are "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."
D. "User" is any City employee, advisory body member, Council Member, contractor, intern, or volunteer who uses City-owned or City-provided electronic technology.
E. "Writing" includes electronic mail.
F. "Preliminary Drafts" are preliminary versions of a written document, such as a staff report or draft agreement that is ready for revision or correction and not a final document of record. It also includes email that does not contain substantive information concerning City policies, decision-making, proceedings, projects, contractors, or practices; and does not relate to threatened or active litigation.