

CITY OF KENT  
PERSONNEL POLICY

NUMBER 7.11

EFFECTIVE DATE: August 1, 2015

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SUPERCEDES: New

SUBJECT: TEXT MESSAGING

APPROVED: \_\_\_\_\_  
Suzette Cooke, Mayor

**POLICY:**

In accordance with rules established by the Washington State Archivist, some text messages must be retained by the City. Further, any text message that relates to City business that exists at the time a public records request is submitted is subject to the disclosure requirements of the Public Records Act found in Chapter 42.56 of the Revised Code of Washington.

The purpose of this policy is to address the use of text messaging for City business and the retention requirements of text messages relating to City business that are received or transmitted on City-owned or personally-owned cell phones and devices. This policy is intended to assure the City's compliance with records retention and disclosure requirements. The failure to follow this policy may expose the City to damages and attorney's fees under Washington's Public Records Act, and therefore, the failure to follow this policy may subject the employee to appropriate discipline.

**7.11.1 DEFINITIONS**

The following terms shall have the meaning provided:

- A. The term "City-owned cell phone or device" means a cell phone or other device capable of sending or receiving text messages that is provided to an employee by the City for the purposes of performing his or her job duties.
- B. The term "City business" in relation to text messages means a text message sent or received by a City employee relating to the work of the employee or the business of the City. City business text messages include:
  - 1. Texts between employees discussing the employees' work or the business of the City. Examples include a text acknowledging an employee will be late for work; a text asking another employee to call to discuss city business; a text by a supervisor asking another employee to respond to a specific location; a text notifying a coworker that someone would like to talk; a text notifying a coworker of a workplace injury; etc.

2. Texts between an employee and a non-employee discussing a matter related to the employee's work or the business of the City. Examples include a text with a vendor asking it to increase an order of supplies; a text to a service provider advising it that its assistance is needed to fix a copy machine; a text between an employee and an outside attorney discussing an issue of city business; a text to a citizen or vendor setting a meeting; etc.
- C. The term "City employee" means an employee of the city of Kent and also means, for purposes of this policy only, an elected official, volunteer, intern, or appointee of the city of Kent, or a person hired by the City through a temporary placement agency to perform work that otherwise would be performed by the employee.
  - D. The term "personal text message" means a text message sent or received by a City employee that does not discuss a matter of city business. Examples include texts between employees, friends or family agreeing to meet for lunch, inviting another to an after-work party, or thanking another for a gift; texts between parents and children, teachers or daycare providers; text messages with doctors, dentists, auto repair or home repair providers; etc.
  - E. The term "personally-owned cell phone or device" means a cell phone or other device that is used by the employee in part to send or receive text messages related to City business, but is not owned by the City.
  - F. The term "text" or "text message" is a brief message that is composed and sent between two mobile phones or portable devices such as a computer or tablet.
  - G. The term "transitory text" means a text message that only documents information of temporary, short-term value, and that is not needed as evidence of a business transaction. Examples of transitory texts include without limitation:
    1. Texts that set work meetings or request job-related phone calls.
    2. Texts that are akin to voice mail messages.
    3. Texts noting the sender has completed tasks (e.g. "I returned the call to Mary Smith," "The broken water main has been repaired," or "The suspect has been apprehended.")
    4. Texts informing a coworker/supervisor that the sender will be late to work, late to a meeting, is taking the day off, or other similar message.
    5. Texts that ask another employee to take some form of action (e.g. "Can you please take your City vehicle to the shops," "I need you to

call Frank about the sewer line on 256<sup>th</sup>,” or “You are needed in court at 11:00 a.m.”)

6. Texts that contain information that is later included in another City record. Examples include:
  - a. A Street Supervisor receives a text from a coworker informing him of a fallen tree on 256<sup>th</sup> Street. The Supervisor later prepares a work report noting the fallen tree on 256<sup>th</sup>, and that he sent a crew to clean up the tree. Once the work report is prepared, the text becomes transitory.
  - b. A Police Detective receives a text from a Sergeant explaining that she talked with a witness in an investigation, and asking the Detective to follow up and take a statement from the witness. The Detective then takes a statement from the witness. Once the statement is taken, the text becomes transitory.

### **7.11.2 TEXTS REGARDING CITY BUSINESS ARE PUBLIC RECORDS**

As explained below, the Washington State Archivist has determined that some text messages regarding City business constitute public records that must be retained (as explained below, whether a text must be retained depends on whether it is transitory (transitory texts need not be retained once they serve their purpose) or non-transitory (non-transitory texts must be retained)). Texts that are retained, or texts that exist on a cell phone at the time a public records request is received, may be subject to disclosure under the Public Records Act. This applies whether text messages regarding City business are sent or received on a City-owned or personally-owned cell phone or device.

#### **7.11.2.1 City-Owned Cell Phone or Device**

In accordance with City Policies 7.4 and 7.5, City-owned cell phones or devices shall be used for City business and in the event of emergencies, but not predominantly for personal text messages. Moreover, employees have no right to privacy in City-owned cell phones or devices. After receipt of a public records request, and upon request of the City, an employee may be required to provide his or her city-owned cell phone or device to the City for inspection, and all information on the cell phone or device is subject to City review.

Personal text messages do not relate to City business, are not a public record, and need not be retained on a City-owned cell phone or device. However, the fact that personal texts are sent or received on a city-owned cell phone or device is a matter of public record. If personal text messages exist on a City-owned cell phone or device at the time the City receives a public records request, those messages must be retained until the City responds to the request. The content of those personal text messages may be reviewed by City staff in making a disclosure decision.

Additionally, generic information that does not identify the content, subject matter, or sender or recipient of the personal text message may be released, including date, time, size, an indication of an attachment, etc.

#### **7.11.2.2 Personally-Owned Cell Phone or Device**

Personal cell phones and devices are the private property of City employees. Personal text messages do not relate to City business, are not a public record, and need not be retained on a personally-owned cell phone or device. However, text messages sent using a personal cell phone or device that pertain to City business are public records.

While the City may not be permitted to inspect an employee's personal cell phone or device without the employee's consent, an employee who uses his or her personal cell phone or device to send or receive text messages related to City business is required to follow this policy (with the exception of Section 7.11.2.1), and shall be required to produce, transcribe, or note in another document texts relating to City business in accordance with this policy. City employees are also required to cooperate with the City and provide their fullest assistance in fulfilling the City's duties and obligations under the Public Records Act.

#### **7.11.3 TRANSITORY TEXTS V. NON-TRANSITORY TEXTS**

Text messages regarding City business are of two types: (1) transitory texts; and (2) non-transitory texts. In accordance with this policy, transitory texts may be deleted by the user once the texts have served their purpose. On the other hand, non-transitory texts may not be deleted from a cell phone or device until they have been produced, transcribed, or retained in some other manner.

A. Texting Should be Limited to Transitory Texts. An employee should limit his or her texting regarding City business to transitory texts that can be deleted once the message serves its purpose. In the event communications that are more than transitory are necessary, such communications should occur in person, by telephone, by email, or by memorandum, but not by text. Using this approach will avoid complications with archiving and producing texts for the purposes of responding to public records requests.

##### 1. Transitory Texts

a. Delete Once No Longer Needed, **Unless** Public Records Request Received.

According to the Washington State Archivist, transitory texts are designated "non-archival" and "non-essential," and therefore, need not be retained once they are no longer needed for City business. As a result, a transitory text may be deleted once it serves its purpose.

In many cases, a transitory text may be deleted once it is sent or read by the receiver.

Example: An employee texts his supervisor that he will be late to a meeting. This text is transitory and serves its purpose once read by the supervisor. The text message may be deleted by the sender and receiver once it is read.

In other cases, the transitory text may not be deleted immediately, but it may be deleted at a later time when it then becomes transitory.

Example: An employee sends a text to a supervisor advising the supervisor that she witnessed another employee at a local restaurant when the employee was supposed to be working. Assuming the supervisor would be investigating the incident, the supervisor would only be permitted to delete the text once the text was produced, transcribed, or noted in some other document or report. Once produced, transcribed, or noted in another document or report, the text message becomes transitory and may be deleted from the cell phone or device. Thus, if immediately after the incident, the supervisor sent an email to the Human Resources Director explaining the content of the text, the text could be deleted.

b. Transitory Texts May Not be Deleted if there is a Public Records Request.

In the event a records request is submitted that may include within its scope text messages transmitted on either a City-owned or a personally-owned cell phone or device, the employee, once put on notice of the request, shall not delete any text messages from the cell phone or device, even if such text is transitory or personal. In this case, the employee must work with the Public Records Coordinator for the employee's department or the City's Public Disclosure Administrator to produce the requested public records or other necessary response.

In the event a records request is submitted that may include within its scope text messages transmitted on a personally-owned cell phone or device, the employee shall cause the text messages related to City business to be produced in accordance with this policy, if the employee has not already done so.

Additionally, the employee must describe the following to the Public Disclosure Administrator:

(1) A detailed description of the search method used to search the personally-owned cell phone or device for responsive public records.

(2) An indication of whether any responsive records were located.

(3) If no responsive records were found, an explanation of why (e.g., you only have text messages that post-date the time period requested because the texts were deleted before you received notice of the request, no text messages were sent to or received from the person identified in the request, no text messages exist on the cell phone or device that discuss the topic identified in the request, etc.).

(4) If records were found on the cell phone or device that are within the scope of the request but are personal to the employee and not related to City business, the employee must provide specific and detailed facts that support the personal nature of those texts (e.g., the texts are to or from the person identified in the request, but the texts pertain to personal medical appointments, private family matters, etc. and do not discuss City business).

(a) The employee should identify each text generically, including date, time, size, an indication of an attachment, etc.

(b) If the text is to or from a City employee, a public official of another public agency, or a City contractor, the employee shall identify the text message's sender or recipient by name. However, the employee need not identify family members, personal friends, or others by name.

(c) If requested by the City's Public Disclosure Administrator, the Law Department, or another authorized City representative, the employee may be required to provide additional information to support the personal nature of any text message.

(5) If responsive public records are found during the employee's search of his or her personal cell phone or device, the employee shall produce those public records as this policy provides.

The employee may choose to comply with this policy by providing his or her personal cell phone to an authorized City employee to conduct the necessary search. Nothing in this policy requires the employee to allow such an inspection, and no adverse action may be taken against an employee if he or she chooses not to produce his or her personal cell phone and instead complies as otherwise provided for within this policy.

Example: An employee texts his supervisor, on the supervisor's personal cell phone, that the employee will be late to a meeting. This text is transitory and serves its purpose once read by the supervisor. Assume the supervisor did not delete the text from her phone, and one week later, receives notice that a person has requested all emails and text messages that discuss or mention employees being late to meetings. In this case, even though transitory, since the record exists at the time the public records request is submitted, the supervisor may not delete the text. Rather, the supervisor must produce the text in accordance with this policy.

## 2. Non-Transitory Texts

As noted above, employees should not send non-transitory texts relating to City business through a cell phone or device. Rather, an employee should limit his or her texting regarding City business to transitory texts that can be deleted once the message serves its purpose. In the event a person sends or receives a non-transitory text, it shall be produced in accordance with this policy.

### **7.11.4 REPRODUCING TEXT MESSAGES**

#### **7.11.4.1 When is the Employee Required to Produce a Text?**

There are three instances in which an employee is required to produce a text message:

- When the text message is non-transitory and must be retained;
- When a supervisor orders the employee to produce the text message; or
- When the text message is maintained on a cell phone or device and the employee is notified of the existence of a public records request for the text message.

#### **7.11.4.2 How is a Text Message Produced?**

When any of the three requirements is met, the employee shall produce the text message by either of the following means:

- Forwarding the text to a proper City email address; or
- Taking screen shots of the text and emailing the screen shots to an appropriate City email address.
- Utilizing a pre-approved application on a cell phone or devices that stores or disseminates the message to City-owned servers or networks.