



POLICY AND PROCEDURE

CITY OF VANCOUVER WASHINGTON	INDEX			
	Administrative/Council/City Manager			
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City Council Electronic Mail (e-mail) Policy	Supersedes 1/4/11	Prepared by: [City Manager]	Approved by: [Mayor]	

1.0 Purpose

The purpose of this policy is to establish a formal process for electronic mail (e-mail) communications by Vancouver City Council.

2.0 Organizations Affected

City Council/City Manager

3.0 References

City Council Resolution M-3269, December 20, 1999
 City Council Resolution, M-3730, January 3, 2011
 City Council Resolution, M-4157, December 13, 2021

4.0 Declaration of Policy

City computers, electronic mail (e-mail), Internet and other technology resources are available to the Mayor and Councilmembers to assist them in conducting City business. E-mail is a fast and convenient way to communicate within the City organization, with community members, and with outside organizations.

The following guidelines are provided to aid the Mayor and Council in their use of these resources.

5.0 Use of E-mail Communication by the Mayor and Councilmembers

E-mail is simply a communication tool. Councilmembers may use it for the same communication purposes and under the same basic guidelines as they have previously used the mail service, hand-delivery, the telephone, face-to-face conversations and meetings in the past. The City Manager will facilitate the establishment and maintenance of Council e-mail accounts in collaboration with Council members, the City Information Technology Department, and Public Records Officer.

Some uses that are best adapted to e-mail communications include:

- Distributing Council agendas and meeting notices.
- Referring community member questions and concerns to the City Manager for staff response.
- Responding to community member or CMO inquiries about City business.
- Scheduling meetings or other events without playing “phone tag”.

6.0 Inappropriate Uses of E-mail or other Electronic Communication

City computers, e-mail, Internet and other technology resources are public assets. These resources are City property and they are therefore generally not to be used for personal reasons. Personal use is allowed if:

- There is little or no cost to the City;
- The use does not disrupt or distract from the conduct of City business; and
- The use otherwise complies with all other City policies and the Operating Principles, and will not lead to embarrassment of the City. Examples of prohibited uses include, but are not limited to:
 - Creating distributing, downloading or viewing any material that is offensive, obscene, pornographic, profane, sexually oriented, harassing and/or violates City policies or the City’s Operating Principles.
 - Distributing, downloading or modifying copyrighted materials, trade secrets, proprietary information, or confidential, privileged or similar materials without prior authorization.
 - Creating, distributing, downloading or viewing any material that is threatening or related to violence or hate that is in violation of City policies and/or the City’s Operating Principles.
 - Engaging in any activities for personal business or gain.
 - Use that violates any local, state or federal law.

7.0 E-mail as a Public Record

In most cases, e-mail is considered a public record.

E-mail systems send and receive both public records and information with no retention value. E-mail messages that contain information about the City’s activities, decisions, and policies, as well as those that function as evidence of business transactions qualify as “public records” of the City. Electronic mail and other electronic documents that meet

this definition must be treated like paper documents for the purpose of the Public Records Act, including any retention schedules.

For the purpose of satisfying public record laws, e-mail is defined as not only the messages sent and received by e-mail systems, but all transmission and receipt data as well. In order to retain the metadata (send timestamp, receive timestamp, and other properties that are not part of the printed document) e-mail that meets the criteria of a public record that has retention value shall be maintained for the required retention period on a City server in a format that preserves the metadata of the original record. E-mail that exists on personal, non-City computers or in personal e-mail accounts may also be a public record subject to disclosure. Therefore, all City-related e-mail should occur from a City e-mail account hosted on a City server.

In addition to the public records requirements, courts have accepted e-mail as a legitimate source of evidence and it may therefore subject to legal discovery in lawsuits and/or administrative proceedings.

Email that does not have retention value as a public record can be deleted. Examples of types of messages that have no retention value are:

- Personal messages and announcements not related to official business
- Information-only copies or extracts of documents distributed for convenience of reference
- Published reference materials
- Copies of inter- or intra-agency memoranda, bulletins or directions of a general information and non-continuing nature
- Announcements of social events, such as retirement parties or holiday celebrations.

8.0 Use of E-mail for Sensitive or Confidential Information

Generally, e-mail should not be used to communicate sensitive or confidential communications. E-mail can be easily forwarded to large numbers of people who may then copy it and/or send to others. E-mail is generally not recommended for such information as attorney/client communications; property appraisals and other information related to City property transactions; and personnel information such as information on labor negotiations, performance evaluations, or employee disciplinary matters.

If, however, time or other constraints make it necessary to communicate such information through e-mail, provide warning notice in the “Subject” box of the message such as “Confidential Communication – Do Not Forward.”

Note, however, that just calling a document “confidential” does not preclude the recipient from forwarding it to another party. It is still a public record and a court may later find that the document is subject to public disclosure despite its “confidential” designation.

Note as well that e-mail is retrievable long after you delete it from your e-mail box. Recipients may save, print or forward the message, and backups are made of the email system on a regular basis.

9.0 Process for Responding to E-mail from Outside the City Organization

E-mail received by the Mayor and Councilmembers from outside the City organization should receive the same response as communications received by traditional means such as mail or telephone. The City Manager may provide support staff and technology solutions to assist Council members with the management of e-mail as resources permit.

If you respond to the e-mail as the Mayor or as a Councilmember, “cc” the City Manager with your response and forward the outside e-mail communication to CMO for copying and filing in accordance with public record requirements.

10. Application of the Washington Open Public Meetings Act to Mayor and Council Electronic Communications, such as E-mail or Instant Messaging

In most cases, the Washington Open Public Meetings Act does apply to electronic communications, which can include e-mail, instant messaging, or other methods that allow electronic interaction.

In the context of telephone calls, use of a “telephone tree” in which members of a governing body repeatedly call one another to form a majority position on a matter to be decided by the body would violate the Washington Open Public Meetings Act.

Since 2001, it has become well established in Washington law that interactive e-mail discussions among a quorum of a governing body regarding a matter which will come to the body for a vote is a "meeting" under the OPMA.

To avoid violating either the letter or spirit of the Open Public Meetings Act, any interactive electronic communications (i.e. that requires or invites two-way communication) between or among the Mayor or any members of City Council are subject to the following:

- Restrict use of interactive electronic communication among the Mayor and Councilmembers to matters that do not require a vote or other formal action of Council. Interactive electronic communications regarding upcoming ceremonial or social events or about availability for meetings would not violate the Act.
- Do not exchange electronic messages regarding matters which may come to Council for a vote or other formal action. Although interactive communication among three or fewer members of Council would not constitute quorum for purposes of Open Meetings Act, the ease with which electronic mail can be forwarded and exchanged invites interactive communication among a majority of Council. The better practice

would be to simply avoid interactive electronic communication among the Mayor and Councilmembers on any matter that may require formal Council action.

- Do feel free to electronically forward informational materials, e-mails from the public, and other information received electronically to the Mayor and other Councilmembers on a “no comment” or “FYI” basis. This one-way communication is qualitatively no different than routing or forwarding a “hard copy” of a news article or letter and should not violate the Open Meetings Act. Courts have held that it is not improper for members of Council to individually review material in advance of a meeting. These materials should be simultaneously forwarded to the City Manager’s Office to be printed out and made available for public inspection unless otherwise exempted by the Public Disclosure Act.

11. **Application of Appearance of Fairness Doctrine to Mayor and Council E-mail**

The Appearance of Fairness Doctrine applies if the e-mail to or from the Mayor or Councilmembers relates to quasi-judicial matters, which come before Council for decision (e.g. appeals from land use hearing examiner decisions.)

As with any ex parte communication about a quasi-judicial matter, the Mayor or Councilmember who receives the e-mail should:

- Advise the sender by return e-mail that on advice of the City Attorney, they may not comment outside a public meeting on a pending matter before Council and that the sender’s e-mail is being forward to the CMO for inclusion in the public record on the matter.
- Immediately forward the e-mail to the CMO for inclusion in the public record of the matter.
- Disclose on the record in the public hearing or meeting on the matter that the e-mail has been received and is in the record.

12. **Additional Information about Use of City E-mail and Other Electronic Communication**

Applicable City policies include the following

- Use of Computers, E-mail, Internet and Other Technology Resources;
- Use of City Property and Systems; and
- Harassment Prevention;

Copies of these policies are available through the City Manager’s Office or on the Human Resources Department Web site on Citynet.

For more information about specific situations or about training for use of City e-mail and other technology resources, contact the City Manager’s Office.