

MEMORANDUM
Office of the City Attorney



Date: May 29, 2012
To: Mayor Esteves and Members of the City Council
From: Michael Ogaz, City Attorney *M.O.*
Subject: **Elected Officials' Use of Electronic Devices During Meetings**

Councilperson Giordano requested that I look into whether any government entities had adopted policies/rules forbidding elected officials from using electronic devices during meetings. The following is a list of cities that have promulgated policies on this issue:

Petaluma: Members of city legislative bodies may not during a meeting of the body receive electronic communications from or send electronic communications to any person unless it regards an emergency.

Saratoga: City council members and commissioners shall not use any form of electronic communication at any time during a meeting at which he or she is in attendance unless it's an urgent family matter.

Mountain View: Members of the city council should avoid receiving electronic communications concerning any matter before the city council or during city council meetings. However, council members can respond to communications of a personal nature during a recess or if they excuse themselves from the proceedings in a non-disruptive fashion.

Palm Desert: While participating in a public meeting a city official may send/receive email/text messages to/from family members/care givers where absolutely necessary for the care of that family member and send/receive email/text messages that must be sent/received to address urgent business matters of the city official, that do not involve city business, in the reasonable discretion of the city official.

San Jose: Members of the city council have a duty to disclose all material facts and communications received during a council meeting related to an item on the city council agenda after the material facts are received or the communications are received during a council meeting from sources outside of the public decision-making process. Note: This is more of a sunshine policy.

Novato: During city council meetings the use of electronic devices is limited to accessing paperless agenda materials for that meeting. The use of all other technology hardware is not permitted unless the device is used to electronically communicate with family members and does not address city business.

Capitola: The use of electronic communication devices during meetings that are open to the public (city council, board, etc) to access the internet or to receive/send email/text messages is not permitted unless the messaging is with the city clerk, family members/care givers, or relates to urgent personal or business matters that do not address city business.

Gilroy: Same wording as Capitola's.

Bottom line: As indicated above, California cities have taken a wide variety approaches to this issue from the very strictly worded policy of the City of Saratoga to the more lax policy of the City of Mountain View. One consistent is that there is always an exception for emergencies. However, an emergency can mean different things to different people and therefore any policy drafted should explicitly define the parameters of the term. In addition there should be some sort enforcement mechanism for the policy or else city officials will have little incentive to comply.

CITY COUNCIL POLICY

REVISED: _____

Effective Date: March 27, 2012

Resolution No. 17676

SUBJECT: CITY COUNCIL ELECTRONIC COMMUNICATIONS NO: A-22

PURPOSE:

To establish a policy governing the use of electronic communications for the City Council. This policy shall also govern Council boards, commissions and committees.

POLICY:

1. The use of Electronic Media is necessary and useful for the City Council in order to improve communication and efficiently perform their duties. The purpose of this policy is to ensure the proper use of Electronic Media and to establish the policy the City Council will follow when using Electronic Media or an Electronic Communications System. This policy will also ensure that use of Electronic Media by the City Council complies with applicable laws, including the Public Records Act and Brown Act. This policy is applicable to the City Council.

The City is under a State mandate to reduce waste at the source. Consistent with this mandate, the City Council recognizes the negative environmental impact of printing Council agenda packets. Benefits of producing electronic Council agenda packets rather than paper agenda packets include:

- a. Conservation of water and energy: not using paper reduces use of fossil fuel and water needed to make new paper or recycle used paper;
- b. Lower greenhouse gas production: the production, transportation and recycling of paper creates greenhouse gases;
- c. Conservation of forest resources: most office paper used in the U.S. (90 percent) is made from new fiber from forests. Only 10 percent is made from recycled paper. Trees absorb carbon dioxide, produce oxygen and provide habitat for wildlife; and
- d. Continue City's proactive use of technology to save resources.

2. **Definitions**

- a. **Electronic (or E) Communication(s) or Media**—A method for processing or transmitting information in electronic form, including, but not limited to, visual communication and attachments distributed via e-mail, web sites, instant message, text message, social networking, chat rooms, news groups, on-line forums, web logs, social media, feeds or list-serves (collectively referred to as "Internet Forums" or "Social Media"), etc., software programs and the Internet.
- b. **Electronic Communication System**—Devices or products designed to electronically process, transmit or store information such as computers, tablet, notebooks, phones (cell phones and smart phones, etc.), printers, modems, data files and e-mail.
- c. **User**—A Councilmember who uses electronic media or an electronic communication system.

3. **General Procedures**

- a. **Procurement of Electronic Communication System**—Each Councilmember will be responsible for obtaining an Electronic Communication System for their use in accordance with this policy. Funds are available for the procurement of an Electronic Communication System as provided for in the City Council Policy Governing Expenses of the Council No. A-2. Procurement and monthly subscription fees can be reimbursed in accordance with City and Council policies.
- b. **Electronic Communications Content**—E-Communication by nature represents and reflects upon the City's transparency, public image and integrity. Users should ensure messages are respectful, professional and are consistent with City policies. E-Communication should be written or otherwise presented in the same professional and respectful manner as paper communications. E-Communication is also a Public Record and shall also be governed by Section 5.

- c. **Electronic Communication by a Quorum of the Council or a Council Committee**—A majority of the members of the Council or Council Committee shall not engage in discussions regarding City issues via E-Communications.
- d. **Electronic Communications from the Public**—In addition to other means, the public may electronically communicate with the Council through the City's web site at: *www.mountainview.gov*.
- (1) E-Communication from the public addressed to the City Council as a whole will be distributed to each Councilmember by the City Clerk and to staff for response as appropriate. E-Communication addressed to the City Council will be forwarded to the City Clerk. The Mayor or Mayor's designated representative, in consultation with staff if necessary, will respond on behalf of the Council to E-Communication addressed to the Council.
- (2) Upon receipt of an E-Communication addressed to less than a quorum of the City Council, the recipient may:
- (a) Treat it as an individual communication to which he or she may or may not respond;
- (b) Ask the City Clerk to distribute the E-Communication to the full Council; or
- (c) Forward to staff for response as appropriate.

When a Councilmember or City staff person responds to individual E-Communication from the public and desires to forward the response to the Council, he or she shall forward his or her response and the individual E-Communication to the City Clerk for distribution.

- e. **The Brown Act.** Councilmembers are subject to the Brown Act (California Government Code Section 54950, *et seq.*) in their use of electronic communications. The purpose of the Brown Act is to support decision-making which

ensures transparency, protects the integrity of the political process and ensures accurate records of the proceedings.

- f. **E-Communications During City Council Meetings**—Receiving e-communications concerning any matter before the Council, during City Council meetings—either by text, e-mail or through social media forums—should be avoided. In addition, reading, forwarding or responding to e-communications during City Council meetings may result in the perception that Councilmembers are distracted or dividing their attention between a multitude of matters. Councilmembers should strive to give their full attention to the proceedings before them at Council meetings to ensure sound decision-making.
- g. The foregoing limitation shall not apply to communications of a personal nature during City Council meetings. A Councilmember wishing to respond to such a communication during a meeting shall do so during a recess or shall excuse himself or herself from the meeting in a manner that does not disrupt the meeting.
- h. **Participation in Internet Forums.** Councilmembers should avoid discussing an item within the Council's subject matter jurisdiction or on an upcoming City Council agenda in an Internet forum.

4. **Retention of E-Mail**

Councilmembers are responsible for electronically archiving E-Communications in accordance with the City's Records Retention schedule.

5. **Public Records Act**

City records, whether paper or electronic, are governed by the public disclosure requirements of the Public Records Act. Disclosure may be required regardless of who sends or receives a communication or document. In the event that the City receives a request for disclosure of City records that includes E-Communication, the person responsible for the requested records must use his or her best efforts to preserve all City E-Communication covered by the request until the responsive

E-Communications have been identified. Requests for disclosure of any City records applicable to E-Communication or other electronic records of any user subject to this policy shall be submitted to the City Clerk.

6. Confidentiality

- a. California law requires that certain information be treated as confidential and not be distributed to others inside or outside the City who do not have authorization to view such information. Councilmembers may occasionally receive confidential electronic information. Some examples of confidential information are: information relating to litigation or potential litigation; attorney-client communication; information relating to labor negotiations; or information relating to confidential real estate negotiations. When Councilmembers receive confidential information, it should be marked "Confidential Information" so that Councilmembers are alerted to the nature of the information.
- b. Confidential information should not be sent or forwarded to individuals or entities not authorized to receive that information and should not be sent or forwarded to City employees not authorized to view such information.
- c. Councilmembers shall not forward confidential information by E-Communication because of the ease with which such information can lose confidentiality by inadvertent or intentional diversion or retransmission by others.
- d. The City Attorney should be contacted concerning any questions about whether a communication is confidential.

7. Compliance with this Policy

It is the responsibility of every User to ensure that he or she is in compliance with this Electronic Communications Policy.