# ADMINISTRATIVE POLICIES AND PROCEDURES

SUBJECT: **EMAIL AND TEXT MESSAGE USE, ACCESS, STORAGE AND RETENTION POLICY**

EFFECTIVE: 9/1/2019 for Police, Fire, and Support Services Department Users;
7/1/2019 for All Other Users (Replaces policy dated 8/30/18)

## PURPOSE

The purpose of this policy is to establish a uniform written policy regarding the use, access, storage and retention of electronic mail ("email") and SMS/MMS (“text messages”). The City’s messaging services are a tool to facilitate both daily communications of a general transitory nature and communications with long-term value, that are public records, between users and/or external individuals. The City’s email and text messaging systems are not intended to be a platform for the long-term preservation and retention of official, mission-critical, or vital records. The City requires users to handle the administration of emails and text messages on a routine basis. Through this policy, the City intends to provide the most efficient and effective use of the City’s computer resources, maintain the integrity and security of the computer systems, and help to comply with all federal, state, and local laws and regulations. Each user has certain obligations under the public records law, certain messages must be preserved to comply with this law. The purpose of this policy is to help guide users in the preservation of public records and the routine deletion of all other emails.

The following policy applies to the use, storage and retention of email and text messages by City users within the course and scope of City employment and/or regarding the conduct of City business, which may include emails and text messages communicated through private non-city email and text messaging services.

“User” and “users,” wherever used in this policy, shall mean and include every employee, volunteer, intern and contract employee of the City, public official, and every other user of the City’s email and text services. While users should not conduct City business through non-city email and text messaging services, if messages are exchanged relating to the conduct of the City’s business through a private account, those items might be subject to disclosure pursuant to any applicable laws and the user will be individually responsible for searching for and providing any disclosable public records to the City.

## POLICY STATEMENTS

1. General Rules

   A. City email and texting services are provided to users for the sole purpose of conducting official City business.

B. All City email users must screen and evaluate email messages for content. It is the content of the email and not the type of media on which it is stored that determines how long it must be retained.

C. All City text messages to or from any City owned devices will automatically be retained for two (2) years.

D. Emails that are public records must be saved by the custodian or keeper of that public record and preserved in accordance with the most current version of Records Retention Schedule for the City.

    1) A user is the custodian of all business emails he or she sends and business emails received if that user is the primary recipient(s) of the email (i.e. the email is addressed “To” the user). This is true regardless of where the email exists (e.g., a private email account).

    2) A user is not the custodian if he or she is simply copied (i.e., the email shows a “Cc” or Bcc” to that user) on an email sent to another user. This is true regardless of where the email exists (e.g., a private email account).

    3) Exceptions may exist in connection with pending or threatened litigation where the user has been instructed by the City Attorney’s Office to retain all documents, including emails. This is true regardless of where the email exists (e.g., a private email account).

E. Public Records Act requests should be handled in accordance with Administrative Policy A-5 and standard departmental policy and direction.

F. All City email and text messages are property of the City and subject to City review. Messages processed through private accounts that are public records are subject to review and disclosure just like messages processed by the City’s services. Users should be aware that statements in user emails and text messages can be perceived as official statements from the City of Merced. City email and text messaging users have no right of ownership or personal privacy when using the City services.

G. The City reserves the right, without notice, to disclose email and text content to regulators, courts, law enforcement, and members of the public, if required or allowed by law.

H. The City has the right to delete or retain any or all electronic files, including email and text messages, of a former user who is no longer employed by the City.

I. City email and text messaging users should not release message contents to non-City entities for public inspection without obtaining proper approval.

J. Email and text messaging rules shall not be created to automatically forward to or from non-City accounts.

K. When necessary for City business, a department head or an authorized manager may assign another user as a delegate to an email account or arrange for email to be forwarded from one account to another City email account. City email users are responsible for their email accounts, as well as their use of another user's account as a delegate, and will be held accountable for violations of this policy.

L. In accordance with Administrative Policy P-9 (Policy against Discrimination, Harassment and retaliation and complaint procedures), City messages shall not be used in a way that may be harassing, threatening, or demeaning to any person. Any user who receives a communication or message that he or she reasonably suspects may be illegal or may be reasonably considered offensive, harassing, or threatening toward the City, any user or third party shall advise his or her supervisor.

M. City emails (e.g. @cityofmerced.org) and/or emails about city business on any mobile devices, regardless of whether the City owns the mobile device, will be subject to this policy.

N. To ensure that information sent to the "Everyone" email address contains important, appropriate information relevant to a citywide audience, the City has limited the ability of users to send "Everyone" emails to the following groups:

- City Manager, Assistant City Manager, Department Heads and their designees

2. Guidelines

A. Only authorized users, approved by Department Heads, will have the authorization and ability to send Citywide all user distribution list email messages (see General Rules, 1-N above).

B. Encryption of messages is not guaranteed in the City's services. Therefore, messages should not be used to transmit confidential or personal information such as credit card numbers, social security numbers, bank account numbers, etc. Please contact the Information Technology department for alternative tools to the messaging services to securely transmit and receive confidential or personal information.

C. Any "Mailbox" item older than one year will automatically be moved to the user's archive.

D. All emails in the "Deleted Items" folder older than 30 days will be automatically deleted.

E. All emails in the “Sent Items” folder older than 2 years will be automatically deleted.

F. All emails sent or received must be smaller than 50MB.

G. All mailboxes will have a total size restriction place upon them.

H. Upon separation from City employment, employee email mailbox will be removed and deleted after 60 days. Upon request of the department head, emails can be moved to another user account prior to the email mailbox being removed and deleted. It is the Department’s responsibility to sort through the separated employee’s email to ensure all public and vital records are moved before the removal of the mailbox.

3. Types of Emails and Text Messages

A. Personal Emails/Text Messages and Junk Emails/Text Messages

1) The City prohibits the use of the City email and text services for personal use. The City recognizes that unforeseen circumstances may infrequently occur in which personal use takes place resulting in minimal and incidental use. In such occurrence, if the message does not constitute a public record, it should be deleted.

2) “Junk mail/text messages” is all messages that are unwanted and have no informational value. This includes spam and phishing. Junk messages are not considered public records and should be deleted immediately.

B. Email/Text Messages That Are Transitory or Not a Public Record. Transitory messages are those of temporary usefulness and should be disposed of once that temporary use has expired.

1) Transitory emails/text messages and emails/text messages that are not public records have no administrative, legal, fiscal or archival requirements for their retention.

2) Examples, including but not limited to:
- Courtesy or personal correspondence
- Meeting requests
- Out-of-Office replies
- Thank you messages
- Duplicate messages and attachments
- Published materials from outside agency
- Replies to routine questions and information
- Incoming listserv messages
- Media advisories, news and press releases

- Messages sent to another employee in department with a copy sent to you
- Meeting minutes
- Anything addressed to all users (e.g., “Everyone”)

C. Public-Record Emails or Email Messages of Long-Term Value. Email messages, and attachments thereto, and established records listed in the City Record Retention Schedule. **Note: It is the individual user’s responsibility, if they create or otherwise conduct any public business through private non-City email systems—which the City advises against doing—to maintain those records in accordance with the City’s retention schedule and all applicable administrative regulations and state and federal laws.**

1) Examples, including but not limited to:
   - Policies and directives
   - Correspondence or memoranda relating to official City business (excluding duplicates)
   - Any document that initiates, authorizes or completes a business transaction
   - Final reports and recommendations
   - Attorney work product
   - Personnel file information

2) If an email is determined to contain long-term value, users are required to move the email out of the users inbox prior to any expiration of the email retention period as noted in Section 2, and:

   a. Move the message (and/or attachments) from the email inbox to the user’s archive.

   b. Generate a hard copy printout and place it into the proper paper file for further retention.

D. Email Related to Litigation or Government Investigation. If the content of an email is related to actual or pending litigation or a government investigation, it shall NOT be destroyed without the express written approval of the City Attorney’s Office. This restriction begins when the City Attorney’s Office issues a “litigation hold” memo or otherwise notifies users that a matter is the subject of litigation or other legal proceedings, and continues until terminated by written authorization from the City Attorney’s Office.

4. Attorney-Client Privileged Communications

The attorney-client privilege can provide valuable protection for the City’s legal interests and should be preserved. Some emails sent, received or stored will constitute confidential, privileged communications between the City and its

attorneys. Note that generally the privilege attaches only to communications which are intended to be confidential, not disclosed to third parties, and contain advice or an opinion formed by the attorney in the course of the attorney-client relationship. Attorney-client communications shall not be forwarded or disclosed without consulting and receiving approval from the City Attorney's Office.

5. Confidential/Sensitive Information

A. Most communication among City users is not considered confidential and does not contain sensitive information. However, certain communications may contain confidential or sensitive information. Examples of confidential/sensitive communications include, but are not limited to personnel records, payroll employee information, medical insurance information, customer billing records, proprietary agreements, social security/employee numbers and legal compliance information. Questions about whether communications are confidential or sensitive should be raised with the user's supervisor.

B. Users shall exercise caution in sending sensitive information on the email service and should consider whether written memoranda, letters or phone calls would be preferable, because of the ease with which such information may be retransmitted through email and text message.

C. Confidential and sensitive information must not be sent or forwarded to any person or entity not authorized to receive that information and must not be sent or forwarded to other City employees who do not require the information in order to perform their assigned job duties in connection with the specific matter.

D. Care should be taken in using email to ensure messages are not inadvertently misdirected to the wrong person or entity. In particular, exercise care when using distribution lists to make sure all addresses are appropriate recipients of the information. Lists are not always current and individuals using lists should take measures to ensure lists are current. Additionally, be cautious when using the "reply to all" function.

E. If an user inadvertently receives a confidential or sensitive message, the user should immediately notify the sender and delete the message.

6. Enforcement

An employee found in violation of this policy may be subject to disciplinary action, up to and including termination of employment.

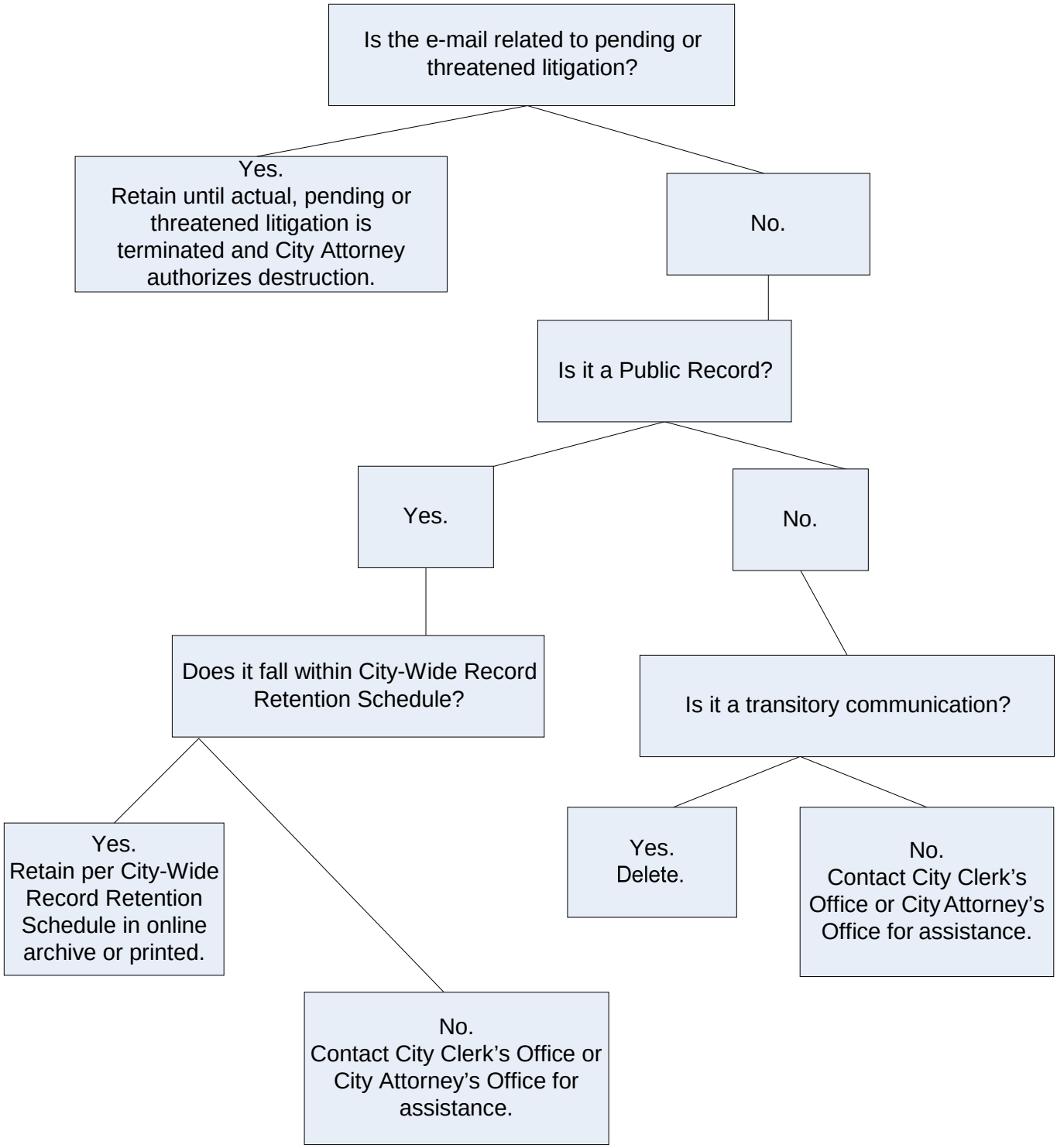
Employees must acknowledge that they have read and understand this policy, and

agree to the terms and conditions stated in this policy.

7. Personal Email and Text Messaging Account Use

The City strongly advises against the use of personal accounts for City business. The City recognizes that unforeseen circumstances may infrequently occur in which personal account use takes place. Personal accounts used for the conduct of City business may be subject to Public Records Act requests. Individual users are personally responsible for maintaining any public records created and/or stored through personal account use pursuant to the City's applicable Administrative Regulations and the City's Record Retention Schedule. Where personal accounts are used to conduct City business, individual users, as custodians of their own records, are required to search those accounts when records requests are made, and respond to the City Clerk's Office concerning whether they have any responsive records. A user may be required to execute an affidavit concerning their search of private account record.

# CITY OF MERCED E-MAIL RETENTION FLOWCHART



## 8. Remote Email Access from Personal Devices

The purpose of this policy is to define the standards for remote access to the City's email service from personal devices. These standards are designed to minimize the City's potential exposure to damages, which may result from inappropriate or careless use of City resources. Damages include, but are not limited to, loss of sensitive or confidential City data, damage to public image, damage to critical City computer systems, etc.

In addition, this policy emphasizes that remote access to email is not guaranteed and is provided as a convenience to users. This policy provides standards for non-compensable, voluntary and incidental access to the City's email service.

### Policy Statements

## 9. General Policies

This policy applies to City of Merced users requesting remote access to the City's email service.

Following are provisions of this policy:

A. It is the responsibility of users with remote email access privileges from personnel devices to maintain appropriate levels of security and confidentiality of City resources.

B. The user is responsible for taking steps to prevent unauthorized uses and bears responsibility for the consequences should access to the email service be misused.

C. Remote use of the City's email service is subject to compliance with the "email and text message use, access, storage and retention policy". City of Merced email is to be used only to conduct City business.

D. Non-exempt employees time spent accessing City email via personal devices must be incidental and is therefore not subject to FLSA overtime. Any non-incidental access by non-exempt employees is not authorized by the City.

E. Non-exempt employees may only have access with approval by their department head and will not receive overtime pay or compensatory time for accessing email via personal mobile devices. The employee must submit this form for approval: https://merced.seamlessdocs.com/f/SmartphoneEmail

F. The user is responsible for all costs associated with the remote access connection from personal devices including, but not limited to, Internet connection or usage fees, equipment, and required software.

G. If a personal mobile device is lost or stolen, the user is responsible to immediately report this to the City's Information Technology Department. The user must agree to have the device remotely wiped and erased of all data, **including personal information**, if the device is not recovered in a timely manner.

10. Technical Requirements

A. At no time should any City user provide his or her email password to anyone, not even family members.

B. All personal devices used for remote access to the City email service must use the current and vendor supported operating system and browsers.

C. Firewalls provided with operating systems should be enabled and configured to minimize security risks.

D. Apple and Android Smartphones and Tablets via ActiveSync:
1) Shall have: A passcode with 4 characters enabled
2) Shall have: Encryption enabled.
3) Shall have: After 10 sign-in failures, the device is wiped enabled.
4) Shall have: Lock device after 10 minutes of inactivity.
5) Shall: Not be "rooted" or "jailbroken."

E. Browser Based Email Access:
Must be current and supported version of Safari, Chrome, Firefox, Internet Explorer, or Edge.

F. Microsoft Outlook for Windows/Mac Computer based email access:
Officially supported version of Microsoft Outlook.

Individuals who wish to use remote email access solutions not listed above to the City of Merced email service must obtain prior approval from City's Information Technology Department.

11. Enforcement
Any employee found to have violated this policy will have remote access immediately disabled and may be subject to disciplinary action, up to and including termination of employment.

APPROVED:

Steven S. Carrigan
City Manager

AFFIDAVIT OF PUBLIC RECORDS SEARCH

**I, _____, declare as follows:**

1. On _____, I conducted a search of one or more of my personal communication devices and/or accounts in response to a request for public records made under the California Public Records Act by _____ and dated _____(hereinafter the "CPRA Request").

2. I searched the following personal devices and/or accounts:

_____

_____

_____

3. I searched the foregoing personal devices and/or accounts using the following search criteria:

_____

_____

_____

4. As a result of my search:

☐ **Responsive Records.** I found records potentially responsive to the CPRA Request and provided all such records to the Custodian of Records for the City of Merced ("City") or other applicable City official for review.

☐ **Personal Records.** I found records potentially responsive to the CPRA Request that are personal and not public records. Attached hereto as Attachment "A" is a description of the facts upon which I withhold those records from the City.

☐ **No Responsive Records**. I did not find any records potentially responsive to the CPRA Request.

***I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this _____ day of _____, 20__ at _____, _____.***

By: _____
Signature

Printed Name:_____

ATTACHMENT “A”
AFFIDAVIT OF PUBLIC RECORD SEARCH

| **Description of Record (*e.g.* type/date/recipients)** | **Facts in Support of Withholding from the City as a Personal Record** |
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