staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Leo L. Mingle, Jr., Assistant City Manager

SUBJECT: Consideration and possible action to adopt Resolution No. 16-XX – A Resolution establishing a policy for retaining and purging electronic mail and voicemail.

DATE: August 22, 2016

EXECUTIVE SUMMARY

The proposed resolution establishes a policy for retention and deletion of electronic mail and voicemail (i.e., "electronic communications") after a minimum of 90-days – unless retained longer due to archival value or if necessary or convenient to discharging the City's business.

RECOMMENDATION TO CITY COUNCIL

1) Adopt Resolution No. 16-XX; or

2) Alternatively, discuss and take other action related to this item.

FISCAL IMPACT

There is no fiscal impact at this time.

DISCUSSION

On August 24, 2015, the City Council adopted Resolution No. 15-62, a Records Management Program and Records Retention Schedule. The purpose of the Records Management Program is to apply efficient and economical methods to the creation, utilization, maintenance, retention, preservation, and disposition of all records managed by the City.

The proposed resolution provides direction for the routine, automatic, deletion of electronic mail and voicemail on a minimum 90-day basis. Current policy is for all electronic mail without archival value to be deleted 30 months after the date it was created. The current policy does not address voicemail.

The 90-day time period stems from several different statutes that establish a 90-day to 100-day retention period for substantially similar items. For example, Government Code Section 34090.7 allows routine security videos to be destroyed after 90 days and Government Code Section 34090.6 allows destruction of routine phone recordings and video recordings after

100-days. Moreover, the statute of limitations for challenging a final decision made by the City is generally 90-days (Code of Civil Procedure Section 1094.6).

Since Government Code Section 6254 provides that drafts and preliminary memos are not disclosable public records, most emails could be deleted immediately since they generally are not used in the course of business; they usually a written form of a "conversation" between sender and recipient. Those emails that are used in the course of the City's business, or that constitute a "final draft" of a business decision, must be retained in accordance with the City's adopted retention schedule. This means they must either be converted into a hardcopy or an electronic medium (such as DVD or microfiche) that cannot be altered and then kept by the City for at least 2 years (pursuant to the Government Code). Examples of such records include, without limitation, existing service contracts and agreements, historical records, and other such items expressly required to be retained by law.

The automated destruction of emails every 90-days strikes a balance between retaining all emails for at least 2 years in accordance with the records retention policy and allowing a period of time to determine whether or not they may be used in the ordinary course of business including, without limitation, whether or not they would be part of a writ petition that must be filed within 90 days of a final decision rendered by the City.

ATTACHMENT

Resolution No. 16-XX 3

CITY OF BELLFLOWER

RESOLUTION NO. 16-XX

A RESOLUTION ESTABLISHING A POLICY FOR RETAINING AND PURGING ELECTRONIC MAIL AND VOICEMAIL

THE CITY COUNCIL RESOLVES AS FOLLOWS:

SECTION 1. The City Council finds and declares as follows:

A. Electronic communications including, without limitation, electronic mail, voicemail, fax machines, and mobile phones, have become common tools in City business.

B. While using these technologically advanced communications, it is important to recognize that the City remains obligated, under some circumstances, to preserve communications under California law including, without limitation, the Public Records Act (Government Code §§ 6250-6276.48).

C. It is in the public interest that the City Council adopt policies that regulate public officials' and employees' use of electronic communications and identify the circumstances when electronic communications must be preserved.

SECTION 2. Purpose. This Resolution is adopted to establish policies that help ensure the City's compliance with applicable law including, without limitation, the California Public Records Act; protect the public welfare; and facilitate City business practices. Nothing contained in this Resolution is intended to hinder City officials', officers', or employees' use of electronic communications.

SECTION 3. Definitions. Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this Resolution:

D. "Archival form" means either:

1. Transcribing or printing electronic communications in a legible hard copy form; or

2. Transmitting, converting, or recording an electronic communication into an electronic format by which the informational content of the electronic communication is permanently or indefinitely preserved and such information may be retrieved in readable or audible and comprehensible form. Examples of such storage include, without limitation, optical disk storage; microfiche; and digital photography that is incapable of deletion or alteration.

E. "Electronic communication" or "communication" means any communication to, from, between or among any City official(s) or employee(s) by using an electronic communication system for City business purposes when it unnecessary that the informational content of such communication be preserved for future City use or reference.

F. "Information Technologies" or "IT" means any system, device, hardware, software, or other equipment designed and used for transmitting or receiving communications by any form of electronic mail (e-mail) or voice mail system, or any network of interconnected computers, including, without limitation, the Internet and Worldwide Web, as used for such purposes.

G. "Users" means City officers, employees (regular, extra-help and temporary) contractors, volunteers and other individuals provided access to IT.

SECTION 4. Applicability. This policy applies to users. Third parties should only be provided access to the City's IT as necessary for their business purpose with the City and only if they agree to abide by all applicable rules.

SECTION 5. Routine Deletion of Electronic Communications. Unless otherwise specified in this Resolution, electronic communications should be routinely deleted from IT without preserving any portion of the informational content of the communication as prescribed by the communications system. Electronic communications are not intended for permanent storage. Except as otherwise required by applicable law, all electronic communications must be automatically purged on a minimum 90-day basis by IT.

SECTION 6. Preservation of Electronic Communications. It is the responsibility of each user to determine whether an electronic communication should be archived and maintained as an official City record within 90 days of receipt to prevent the inadvertent deletion of City records. Electronic communications must be converted into archival form when either:

A. A law expressly requires the communication be kept; or

B. Preserving the communication is necessary or convenient to discharging the City official's duties and the communication was made or retained to preserve its informational content for future City use or reference.

SECTION 7. Archives Preserved pursuant to Retention Schedule. Once in archival form, electronic communications will be preserved pursuant to the City's approved retention period for the file or record series in which such communication is placed, or to which it relates. Retention provisions of this section will not be deemed to impose any legal requirement or obligation on the City or any of its officers and employees not otherwise required or established by any other provision of law. Following consultation with the City

Attorney, the City Manager, or designee, will determine whether such communications should be permanently preserved, disclosed, produced, or destroyed in accordance with the City's retention schedule.

SECTION 8. Compliance with Law. Immediately upon receiving a public records request, subpoena, or court order which identifies an electronic communication, City officers and employees will use their best efforts, and use all reasonable means practicable, to preserve such electronic communications.

SECTION 9. The City Manager will establish polices and procedures as necessary to carry out this policy.

SECTION 10. The Mayor, or presiding officer, is hereby authorized to affix his signature to this Resolution signifying its adoption and the City Clerk, or her duly appointed deputy, is directed to attest thereto.

SECTION 11. This Resolution will become effective immediately upon adoption and will remain effective unless repealed or superseded.

PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BELLFLOWER THIS _____ OF _____ 20__.

_____
Dan Koops, Mayor

Attest:

_____
Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

_____
Karl H. Berger, City Attorney