

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Resolution No. 323 amending the Employee Handbook policies regarding 1) use of communication systems to preserve public records; 2) use of lunch and work breaks; and 3) rules for Family Leave
DEPARTMENT:	Human Resources, City Attorney
PRESENTED BY:	Marci Wright, Human Resources Director Ian Sievers, City Attorney
ACTION:	<input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

ISSUE STATEMENT:

The Employee Handbook was adopted by the City Council in 1999. In an ongoing effort to ensure that the City's personnel policies are a viable and effective, staff periodically requests approval from Council on updates to the policies to keep them in line with changes in State and Federal law and changes in City operations.

With the growing use of personal communications through the internet and cell phones, proper retention of business-related communications for public records has become a new challenge. To facilitate access to these records, amendments to the personnel policies are proposed to limit the use of an employee's personal equipment or third-party controlled communications systems where retention and production of public records may be unreliable.

Changes are also proposed for Employee Handbook sections on work breaks to clarify responsibility of the employee for scheduling these breaks; and to amendments to the Family Leave policy to include new statutory references enacted since the last Handbook amendments.

FINANCIAL IMPACT: None.

RECOMMENDATION

Adopt Resolution No. 323 amending the Shoreline Employee Handbook, Sections 8.12, 5.02 and 6.05 regarding 1) use of communication systems to preserve public records; 2) use of lunch and work breaks; and 3) rules for Family Leave.

Approved By: City Manager *JU* City Attorney *IS*

DISCUSSION

A. Communications Systems. Communications originating from City servers store public records, including backup for employee email accounts. These City controlled systems allow reliable retention and production of records for the City's use and for public access under Washington's public records act.

In particular, the City now has an efficient, centrally searchable email database for all City email accounts that is far more reliable and efficient than relying on individual employees to search their emails in response to a public records request. Emails are automatically duplicated when they are sent or received and retained for the appropriate retention periods under the Secretary of State guidelines. The production of email has been assigned to the City Clerk as the City's official records custodian, who is now able to do a single search of all email accounts.

The City has also recently upgraded its remote access software allowing employees to open and save City documents and City emails from remote computers. The new system is easier to connect from any internet connected computer and has an operating system that closely mimics the employee's computer desktop at City Hall.

Despite these improvements, new modes of communication such as texting and social networking and the proliferation of internet accessible smart phones, pads and tablets threaten to frustrate the goal for efficiency and reliability in retaining records. The increased availability to the internet has made it easier for employees to create city communications away from the workplace. Section 8.12 of the Employee Handbook, which addresses use of communication systems, is amended in proposed Resolution No. 323 to address this problem.

Under the amendments, no text messaging is allowed for City business; it is prohibited outright either on a city cell phone or private cell phone. The texts themselves are public records but the City's cell provider, and providers generally, do not retain the text messages, only a log of calls made. Employees will have to continue sending written messages to and from cell phones using a City Outlook email account.

To avoid expectations of privacy that are not consistent with the City's obligations under the public records act, the section is also clarified to provide notice to employees of the risk of commingling personal records with public records under the de minimus personal use of city systems, and of retaining city records on personal equipment. There is no records act exemption that allows redaction of private content from a record that contains both public and private information.

Finally, there are restrictions on the use of personal phones or computers for city communications, again to avoid relying on individual employees to retain public records on private equipment that may not be accessible for records requests or not reliably retained as required by law. An exception is allowed if the communication is to or from

city equipment that retains the record on the City's servers. Private phone use should be to a city phone which will create a City record of the call. Documents can be created on personal computers without using the remote connection if the document is saved on the city servers. Some cities allow a stipend toward personal phones that will be used for City business, rather than allowing reimbursed personal use of a city phone. We believe reliance on employees saving and producing phone logs sent with their billing statements is an unacceptable risk compared to the City's retention of its own phone account records and should only be allowed with Director approval and agreement by the employee for future access.

B. Clarification for Lunch and Rest Breaks. Current policy meets all legal requirements that regarding breaks in Section 5.02 of the Employee Handbook. Staff is recommending language be added to this section to clarify that breaks are the responsibility of the employee. This change is being offered to provide clarity on who has the responsibility of insuring these breaks are taken and to alleviate any future liability when an employee chooses to forgo scheduling a break.

C. Compliance with Federal and State Family Leave requirements. Section 6.05 Family Leave defines the City's requirements to comply with Federal and State leave law requirements. Recently the Washington State legislature has been very active in this area of the law and has made several revisions and additions to leave laws. We anticipate this level of activity will continue and new components of leave law will be enacted in the coming months and years. The language being recommended is intended to direct employees to Human Resources to ensure that the most recent laws and regulations are being applied to their specific situations.

RECOMMENDATION

Adopt Resolution No. 323 amending the Shoreline Employee Handbook, Sections 8.12, 5.02 and 6.05 regarding 1) use of communication systems to preserve public records; 2) use of lunch and work breaks; and 3) rules for Family Leave.

FINANCIAL IMPACT: None.

Attachments:

Attachment A - Resolution No. 323

RESOLUTION NO. 323

A RESOLUTION OF THE CITY COUNCIL, CITY OF SHORELINE, WASHINGTON, AMENDING THE EMPLOYEE HANDBOOK POLICIES REGARDING USE OF COMMUNICATION SYSTEMS AND USE OF FAMILY LEAVE AND WORK BREAKS

WHEREAS, the City's personnel policies should be updated to reflect developments in public records and family leave law; now therefore

THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, HEREBY RESOLVES:

1. The Shoreline Employee Handbook communications systems use policy is amended as follows:

8.12 Telephone, E-Mail, Voice Mail and Other Communication Systems on and City Equipment and Personal Equipment

A. City Equipment

Computers, electronic mail, telephones, voice mail, facsimile machines, copy machines and other information-related City equipment are provided to employees to be used for City business purposes and maybe accessed by other City staff. ~~No message or file monitoring by the City will occur without prior permission of the City Manager, however employees should keep in mind that s~~Supervisors are responsible for regular monitoring of phone call identification logs to enforce this policy and message or file monitoring by the City may occur with prior permission of the City Manager or for purposes of public records production.

~~As a public agency, most City records are public and can be protected from disclosure only as provided by law. As a result, employees must be aware that email, along with most other written documents, may be subject to public disclosure.~~

Employees are not to attempt to gain access to another employee's computer files, e-mail messages or voice mail messages without that employee's permission.

~~The City's email, voice mail and other information systems may not be used in a way that would be disruptive or offensive to others.~~ Employees shall not negligently or willfully damage City equipment nor engage in unauthorized use including use that is disruptive or offensive to others, supports any profit-making business or outside employment, solicits contributions for any cause or advocates for or against any ballot measure or candidate.

~~The personal use of equipment should be minimized.~~ For the convenience of the employee, it is permissible to place or receive occasional personal calls or e-mail ~~for the~~

ATTACHMENT A

~~convenience of the employee not excluded above, but such use should be minimized. The City also recognizes that it is unrealistic to expect employees assigned cellular phones for certain positions to maintain separate equipment for personal use. Long distance calls and cellular calls must be accounted for on a regular basis, with reimbursement provided to the City for personal use outside the following exceptions:~~

- ◆ ~~De minimus incidental~~ activity not to exceed \$2.00 per billing cycle
- ◆ Placing calls to notify family of emergencies or unexpected changes in a work schedule.

Employees shall not place or receive text messages on City cellular phones. This includes both City business-related text messages and personal text messages.

~~Employees shall not use information equipment or systems in any way that supports any profit making business or outside employment, solicits contributions for any cause, or advocates for or against any ballot measure.~~

B. Public Disclosure of Records Located on City Equipment/Accounts and Personal Equipment/Accounts

As a public agency, all City business records, even if located on personal equipment, are public records and can be protected from disclosure only if a specific exemption in the Public Records Act exempts the record from disclosure. As a result, e-mails and text messages, phone and text messaging logs, and all other documents related to City business located either on City equipment or on personal equipment or personal accounts are subject to public disclosure, if requested. Employees should not expect any right to privacy in the public records located on their City equipment or on their personal equipment.

Entirely personal records located on City equipment or on personal equipment are not considered public records and are not subject to disclosure.

No text messaging for City business is allowed. No emailing on personal accounts for City business is allowed. Personal phones and personal computers may only be used for City business under the following circumstances:

- (1) The phone call is made to a City phone; or
- (2) The document is saved to the City's server.

An employee may be approved by their Department Director to use a personal cell phone for City business under circumstances other than those designated above that will assure record retention and production in compliance with the Public Records Act including:

ATTACHMENT A

- The employee shall be responsible for retaining phone records associated with personal phones that reflect City business communications for a minimum of one year from the date the call is made or received.
- In the event of a public records request for City-related records located on an employee's personal equipment or personal account, employees must cooperate with the City and produce those records for disclosure

Records that mix both City business and personal business are considered public records and are subject to disclosure in their entirety. The Public Records Act does not allow redaction of personal information within a public record.

No City business may be conducted on private social media (tweets, blogs, web posts). City business may be conducted on a City-sponsored social media.

Violation of this policy may be grounds for disciplinary action, up to and including termination.

2. The Shoreline Employee Handbook employee break policy is amended as follows:

5.02 Breaks

- A. **Lunch and Rest Breaks:** All employees working an 8 hour day shall be entitled to at least a one half hour unpaid meal period within five hours of the beginning of his/her shift, and scheduled as close to the midpoint of the day as possible. In addition, employees are entitled to a paid ten minute rest break for each four hours of working time. Employees who are able to take a break as needed do not have to take a formally scheduled break and it is the employees' responsibility to take these breaks. Breaks shall be arranged so as not to interfere with normal business operations. All breaks should be taken away from the employee's immediate work area. Breaks cannot be combined or saved until the end of the day in order to arrive at work late or to leave work early.
- B. **Lactation Breaks:** For one year after her child's birth, nursing employees are allowed to take reasonable breaks to express breast milk whenever the nursing employee feels it is necessary to do so. Lactation breaks will be treated as outlined under Section 5.02A. A private space for this purpose has been established at all City worksites. If you need information on the space at your worksite contact a supervisor or Human Resources.

3. The Shoreline Employee Handbook family leave policy is amended to read as follows:

6.05 Family Leave

The City complies with the Federal Family and Medical Leave Act of 1993 (the FMLA - 29 U.S.C.A., 2611) and all applicable state laws (RCW 49.78, RCW 49.12.265, WAC 296-130) related to family and medical

ATTACHMENT A

leave. This policy provides detailed information concerning the terms of FMLA. State laws may have additional requirements and provide additional protections; please check with Human Resources for details.

ADOPTED BY THE CITY COUNCIL ON FEBRUARY 13, 2012.

Keith A. McGlashan, Mayor

ATTEST:

Scott Passey, City Clerk