

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, REPEALING RESOLUTION NO.
2017-339 AND CLARIFYING PROCEDURES FOR
RETENTION AND PRODUCTION OF PUBLIC RECORDS
CONTAINED IN ELECTRONIC MEDIA.

WHEREAS, on December 14, 2017, Council passed Resolution No. 2017-339 setting forth standards for retention and production of public records contained in electronic media, and the Council now wishes by this Resolution to refine the procedures set forth therein; and

WHEREAS, the California Public Records Act (CPRA) (Government Code section 6250 et seq.) declares that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state"; and

WHEREAS, whether or not something is considered a public record depends on the content of the writing, not the medium in which it is kept, or the location where it is kept; and

WHEREAS, the CPRA is concerned with disclosure of public records, but does not mandate retention timelines; and

WHEREAS, effective records management policies benefit the City by reducing the time and resources necessary to locate responsive documents, and benefit the public by providing a more focused response to CPRA requests, rather than providing pages and pages of non-responsive material; and

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Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval: 

Resolution No. _____

WHEREAS, the City has adopted a records retention policy set forth in Resolution No. 2008-243 (City Records Retention Schedule), modeled on the Secretary of State Local Government Resource Management Guidelines; and

WHEREAS, the Council wishes to create and clarify policies relating to the production and retention of public records stored electronically; and

WHEREAS, this Resolution is intended to supplement, not supersede, Resolution No. 2008-243.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. Definition of Public Record. CPRA defines “public record” to include “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” Public records are defined by their content, not their media or location. They may be in the form of emails, voicemails, texts, instant messages, social media posts, metadata, or other electronic formats. Public records may be contained in a public official or employee’s personal account or on their personal electronic device.

2. Definition of Non-Record. Documents and other materials (including originals and duplicates) that are not otherwise required to be retained, are not necessary to the functioning or continuity of the City, and which have no legal significance are not considered public records. Examples include materials and documents generated purely for the convenience of the person generating them, draft documents which have been superseded by subsequent versions or rendered moot, and duplicate copies of records that are no longer needed. Additionally, transitory

communications that are temporary or of brief duration and not intended to be retained in the ordinary course of business, and of which the information content is neither necessary nor intended to be preserved for future City use or reference are not public records subject to disclosure.

3. Retention of Public Records. All public records shall be retained in compliance with the City Records Retention Schedule.

4. Retention and Destruction of Electronic Media. Each individual user shall be responsible for determining whether a writing, document, or communication is a public record or non-record, and then take appropriate steps to preserve or delete it.

a. Email: The City's email server is not intended for use as permanent or long-term document storage. Emails shall not be kept, either electronically or in hard copy, unless retention is required by law or where retention would serve a useful purpose for the City.

i. All emails identified as public records shall be kept pursuant to the appropriate retention period for that category of document as set forth in City Records Retention Schedule.

ii. All emails identified as non-records shall be deleted by the user.

iii. City IT staff shall destroy deleted emails every thirty days.

iv. Emails in a user's inbox or sent folder that are not identified and preserved as public records shall be deleted every seven years.

v. All emails (including deleted emails) of elected officials, the City Manager, Department Directors, and any other positions identified by

the City Manager, shall be archived and deleted after seven years or the appropriate retention period for that category of document, whichever is longer.

vi. Employees and officials shall not use their personal email accounts for official City business. If an employee or official receives an email on their personal account that relates to City business, they should forward the email to their City email account, and advise the sender they do not use their personal email account to conduct City business.

b. Voicemail. Voicemail is considered transitory communication and shall be deleted and destroyed every thirty days.

c. Text Messages: Text messages shall not be used for official City business. The City considers text messages and instant messages as transitory communication that shall be deleted every thirty days. If a user receives a text or instant message that is a public record, it is the user's responsibility to segregate and save the message as required for that category of record in the Records Retention Schedule.

c. Instant Messaging and Web Chat: Except where implemented as a program (such as a Call Center), the City considers instant messages as transitory communication that shall be deleted every six months. If a user receives an instant message that is a public record, it is the user's responsibility to segregate and save the message as required for that category of record in the Records Retention Schedule.

d. Ephemeral Messaging Apps: Ephemeral messaging apps such as Snapchat allow users to send mobile to mobile multimedia messages that automatically disappear from the recipient's screen after the message has been viewed. These apps shall not be used for City business.

e. Internet Browser History: A user's web browser history is primarily considered transitory communication, however, certain elements within the browsing history pertain to security and identification of threats to the City. As such, Internet browser history shall be deleted every six months.

f. Social Media: Posts on social media may be public records. Employees and officials should refrain from discussing City business on their personal Facebook page, Twitter feed, or blog. Each employee or official will be responsible for producing responsive documents if requested pursuant to a CPRA request.

5. Procedure for Producing Public Records Stored on Private Electronic Devices or Accounts. The City must use reasonable effort to disclose all records it can locate. In general, the scope of the City's search need only be reasonably calculated to locate responsive documents. Once the City receives a CPRA request, it will communicate the request to the employees or officials who may have responsive documents. The City will then rely on those employees or officials to search their own personal files, accounts and devices for responsive material. The employee or official will then provide responsive documents, as well as an affidavit that the documents produced are all responsive documents, to their Department PRA Coordinator. The affidavit should describe the extent of the search and, if personal records have been

withheld, provide sufficient facts to show those records are not public records and thus not responsive.

6. Resolution No. 2017-339 is hereby repealed and replaced with this Resolution.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2019.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2019
Mayor Approval/No Return: _____, 2019
Mayor Veto: _____, 2019
Council Override Vote: _____, 2019

YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Katie Doerr [Date]
Chief Assistant