

APPENDIX C
CITY OF NEWPORT BEACH
COMMUNICATIONS EQUIPMENT AND SYSTEMS POLICY

Section 1. Introduction

The City encourages the use of City Equipment and Employee Equipment to increase Employee productivity and improve the City's ability to provide first-class municipal services for the least possible cost to the taxpayer. This Policy governs all City Equipment and Employee Equipment used for City Business. Employees and other users may be provided City Equipment or reimbursed/provided a stipend for Employee Equipment only as authorized by the City Manager, Department Directors, IT Manager and/or their Department IT designee, as in the Fire Department and Police Department. The purpose of this Policy is to regulate Employee's use of City Equipment and Employee Equipment used for City Business to maximize its use for City purposes and minimize or eliminate liability.

Section 2. Definitions

Except where otherwise provided, the terms used in this Policy shall have the same meaning as those provided in the City's Employee Policy Manual.

- A) "City" shall mean the City of Newport Beach.
- B) "City Business" as referenced in the Communications Equipment and Systems Policy shall mean work or services provided by an Employee using Employee Equipment on behalf of the City as part of the Employee's official work duties. An Employee's personal use of Employee Equipment that is unrelated to the City is specifically excluded from this definition and this Policy.
- C) "City Equipment" shall mean those electronic devices owned by, or provided by the City, including but not limited to, the Internet, email, voice-mail, text messages, images, cellular telephones, pagers, personal digital assistants, Smart Phone devices, computer/laptops, telecommunications devices, video and audio equipment, wireless networks, data systems telecommunications equipment, mobile data terminals, transmission devices, data processing or storage systems, computer systems, servers, networks, input/output and connecting devices, software, and documentation that supports electronic communications services.
- D) "Electronic Communications Service" means any service which provides to users thereof the ability to transmit or receive wire or electronic communications.

- E) “Employee Equipment” shall mean those electronic devices owned by an Employee, or a third-party, but reimbursed in whole, or in part, by the City, including but not limited to, the Internet, E-mail, voice-mail, text messages, images, cellular telephones, pagers, personal digital assistants, Smart Phone devices, computer/laptops, telecommunications devices, video and audio equipment, wireless networks, data systems telecommunications equipment, mobile data terminals, transmission devices, data processing or storage systems, computer systems, servers, networks, input/output and connecting devices, software, and documentation that supports electronic communications services.
- F) “Offensive Material” includes, but is not limited to, statements or images that could reasonably offend a person on the basis of his/her age, disability, gender, race, religion, national origin, physical attributes, sexual orientation or any other classification protected by federal, state, or local law.
- G) “Policy” shall mean the City’s Communications Equipment and Systems Policy.

Section 3. Restrictions

The following apply to Employees while using any City Equipment or Employee Equipment used for City Business:

- A. The City’s unlawful harassment, non-discrimination and conflict of interest policies. Employees shall not transmit or receive Offensive Material. For example, Employees are prohibited from displaying sexually suggestive images, downloading or disseminating sexually explicit material, or transmitting images, messages or cartoons that constitute ethnic, racial or religious slurs, unless an Employee is required to review such material in the course and scope of their specific job duties with **PRIOR** written supervisory approval.
- B. Employees shall not seek personal financial gain.
- C. Employees shall not infringe upon the patents, copyrights or licenses of others.
- D. Employees shall not infringe upon the rights of others to proprietary, confidential or trade secret information.
- E. Employees shall not create an actual, potential or apparent conflict of interest.
- F. Employees shall not transmit foul language, profanity or obscenities.
- G. Employees shall not solicit or proselytize others for commercial ventures or transactions, religious or political causes, or participation in any endeavor unrelated to the Employee’s normal duties, unless it is for a City sponsored/authorized event.

- H. Employees shall not intentionally deprive authorized personnel access to any City Equipment.
- I. Employees shall not communicate confidential City information to unauthorized individuals within or outside of the City.
- J. Employees shall not transmit messages or information which is in conflict with applicable law or City policies, rules or procedures.
- K. Employees shall not attempt unauthorized access of or attempt to access unauthorized data on any City or non-City system.
- L. Employees shall not encrypt files, unless necessary or required to transmit files for City purposes.
- M. Employees shall not engage in theft or the unauthorized copying and distribution of electronic files or data.
- N. Employees shall not intentionally misrepresent one's identity for improper or illegal acts, nor engage in unlawful activities.
- O. Employees shall not engage in recreational use of City Equipment that interferes with the ability of the Employee or other users to conduct City work. This includes but is not limited to downloading or uploading software, games, music, or shareware to their City Equipment. Employees are also prohibited from downloading and using instant messenger (IM) on City Equipment, without prior written supervisory approval and in accordance with assigned duties.
- P. Employees shall not perform acts on City Equipment that are wasteful of computing resources or that unfairly monopolize resources to the exclusion of others. These acts include, but are not limited to: sending mass email messages or chain letters and creating unnecessary network traffic.

Section 4. General Disclosure Statement

Employees should be aware that it is possible to recover an E-mail message or identify a website visited even though the message is erased or the visit to a website is closed or the history is erased. Employees should be aware that the City might be required to disclose information or messages sent over and/or stored on City Equipment or Employee Equipment pursuant to requests filed under the California Public Records Act, state law, federal law, or as a result of subpoenas issued in the context of litigation or administrative proceedings. All communications, including text, images, and other data stored on City Equipment may be disclosed to law enforcement or other third-parties without prior consent of, or notice to, the sender or the receiver. Consequently, Employees should not consider voice-mail, E-mail, text messages, images, data, or Internet communications sent or received on City Equipment to be personal, private or

confidential. Similarly, voice-mail, E-mail, text messages, images, data, or Internet communications sent or received on Employee Equipment for City Business are not personal, private or confidential and may be similarly subject to disclosure.

The use of City Equipment and the use of Employee Equipment for City Business is subject to Council Policy F-17, and applicable departmental policies and Standard Operating Procedures (SOPs).

A. Internet Usage

Employees accessing the Internet and/or the City's own Intranet as part of their official duties are representing the City when doing so. Accordingly, except as otherwise provided in this Policy, all Internet communications and contacts using City Equipment should be for professional, business reasons and should not be for personal use. Employees are responsible for ensuring that they use their Internet access privilege in a responsible, ethical and lawful manner, unless an Employee is required to access the Internet in the course and scope of their specific job duties with **PRIOR** written supervisory approval.

Forums and discussion groups may be used only to gain technical or analytical advice for City purposes.

Each Employee is responsible for the content of all text, audio, images, or data that they place or send over the Internet using City Equipment or send as City Business on Employee Equipment. All messages communicated on the Internet using City Equipment should include the Employee's name and attached messages may not be transmitted using someone else's name or under an assumed name. Employees who wish to express personal opinions on the Internet shall do so during non-work hours using non-City Equipment.

In some cases, electronic communications to recipients on systems outside of the City are transmitted through systems and networks not managed by the City. The privacy and confidentiality of these messages or data is, therefore, not assured. In addition, some delivery methods and networks impose legal restrictions regarding the nature of messages or data allowed. Employees are expected to comply with all such regulations and policies. Employees using City Equipment or Employee Equipment for City Business may create criminal and civil liability for themselves and the City by using outside or third party systems in an offensive, defamatory or illegal manner and in such event, Employees may be subject to disciplinary action up to and including termination.

To prevent computer viruses or malware from being transmitted through the use of City Equipment, Employees are not authorized to download any software onto their computer or any drive in or connected to that computer. Employees are prohibited from connecting personal storage devices to City Equipment. Employees interested in obtaining software are required to contact the City's IT

Manager or their department IT personnel. A list of authorized software can be obtained from the City's IT Division or department IT personnel. B. E-mail\Voice Mail\Text Message\Image\Data

E-mail, voice-mail, text messages, images, and data should always be used with the assumption that a message can be read, seen or heard by someone other than its intended recipient. When transmitting messages, Employees and other users should consider that the message might be disclosed to others. Because of these concerns, Employees are required to maintain the highest standards of courtesy and professionalism when sending E-mail, text messages, images, data, or leaving voice mail messages.

The sending of e-mails on a "City-wide" basis to all Employees without the prior written authorization of a Department Director or the IT Manager is prohibited. Transmitting a message or data under another Employee's name or password is prohibited, unless done for a Supervisor with written permission to do so on his or her behalf. Any Employee who obtains a password or user identification must keep that password confidential. Employees shall not share user identification or passwords.

E-mail prepared, used, or retained as correspondence and other documentation containing information relating to the City Business must be retained in accordance with State Law and City Council policies for retention of public records. Unless otherwise required by law, E-mail used solely as a communication device in place of a telephone conversation or for other transitory purposes may be deleted.

Any E-mail, text, image, or data messages retained in City Equipment or relating to City Business retained in Employee Equipment are subject to the same disclosure requirements as other public records. E-mail, text, image, or data message records will be produced in response to request from the public in the same manner as for other public records, except that the burden to search the Employee Equipment and turn over the requested document will be on the Employee. An Employee that fails to assist the City in responding to a Public Records Act request relating to City Business may be subject to discipline, up to and including termination.

Confidential attorney/client communications with City's legal counsel or other authorized legal counsel shall not be copied or distributed to others except as authorized by the City Attorney.

C. Wireless Communications Devices

This Policy applies to all City Employees, departments and organizations. Departments which use City Equipment assigned as a duty phone, or which have City Equipment assigned to vehicles or a position instead of to individuals, may

develop departmental policies and Standard Operating Procedures (SOPs) and/or regulations which provide greater direction to their Employees, as long as that direction is consistent with this Policy.

Each department will determine the need for City Equipment, including cell phones, for City purposes or the need to provide reimbursement/stipend to an Employee for Employee Equipment. When the need is determined, the Department Director will send a written request to the IT Manager, or their department IT personnel.

All Employees are disaster service workers in the event of a disaster but not all Employees have City-issued City Equipment. Therefore, it is the responsibility of every Employee to ensure that their correct contact information is recorded in the City's information system. This can be done through the Employee Access Center, their Department or Human Resources.

Employees are prohibited from forwarding their personal cell phones to City issued City Equipment. The Department Director or designee will meet with the responsible Employee to verify facts and usage, as necessary.

The City and its Employees will comply with California Vehicle Code Section 23123, as the same may be amended from time-to-time, which prohibits all drivers from using a handheld wireless telephone, and "electronic communication devices" while operating a motor vehicle. Unless a hands-free device is used, Employees must pull to the side of the road to use a hand-held device. The City and its Employees will comply with California Vehicle Code Section 23123.5, as the same may be amended from time-to-time, – the California Wireless Communications Device Law. Employees may not transmit or read text or E-mail messages while driving or while idling in traffic. An Employee must pull to the side of the road or no longer be operating a vehicle in order to transmit or read text or E-mail messages. Any Employee who is cited by law enforcement will be responsible for the payment of the associated fine and subject to discipline for violation of this Policy.

Employee safety is a City priority, therefore, Employees who determine it is unsafe to answer their City-issued cell phone or Employee Equipment utilizing hands-free equipment while driving, may decline to answer until it is safe. Employees aged 18 and over are allowed to use Blue Tooth or hands-free earpieces while operating a motor vehicle as long as both ears are not covered. Law enforcement can, at any time, issue a citation to an Employee if, in their opinion, the Employee was distracted and not operating a motor vehicle safely. Any Employee who is cited by law enforcement will be responsible for the payment of the associated fine and subject to discipline for violation of this Policy.

Sworn public safety Employees are permitted limited use of City Equipment, such as cell phones, in the course of their duties, while operating an authorized emergency vehicle. The law provides an exception for those operating a commercial motor truck (excluding pickups) to use a two-way radio operated by a “push-to-talk” feature.

Section 5. No Expectation of Privacy

Employees shall have no right or expectation of privacy in E-mail, text, data, or image messages created, transmitted, received, deleted or stored using City Equipment or City Business conducted on Employee Equipment, including electronic communications routed by a third party communications service provider.

All communications transmitted via City Equipment, whether or not related to personal or confidential matters, are subject to monitoring, at the City’s discretion. The City monitors communications transmitted via City Equipment in the ordinary course of business for purposes that include ensuring their reliability and security. The existence of passwords and “message delete” functions do not restrict or eliminate the City’s ability or right to access electronic communications on City Equipment. The City will not monitor personal E-mail, text, data, or image messages created, transmitted, received, deleted or stored using Employee Equipment that is unrelated to City Business.

The City may randomly or routinely monitor or intercept electronic communications sent or received on City Equipment (voice-mail, e-mail, text messages, images, data and Internet access) and retains the right to do so at any time and without notice to Employees. The City also retains the right, without notice to Employees, to conduct searches of City Equipment and related systems to ensure that they are being used in conformance with this Policy. The City currently monitors, views and/or intercepts information or messages in or accessed through the communications system in the following circumstances and for the following purposes:

- A. Any activity necessary to the provision of service including, without limitation, the maintenance or repair of any City Equipment or software, the retrieval of lost messages, or for the protection of the rights and property of City;
- B. Assistance to persons or entities authorized by law to intercept electronic City communications or to conduct electronic surveillance provided the City is provided with or obtains a court order or other lawful authorization;
- C. The intercepting person is a party to the communication or one of the parties to the communication has given prior consent to such interception;
- D. The electronic communication intercepted is made through a communication system, which is configured so that the electronic communication is readily accessible to the public;

- E. The logging of statistical information concerning the use of or activity upon any communication system including Internet use statistics and access information for individual users that is compiled and forwarded for management review; and
- F. Monitoring of communications with the public to assure the quality of public service.

Section 6. Duplication of Software and Use of Copyrighted Materials

Software and related documentation licensed to the City may be protected by copyright, patent, trade secret or other forms of legal protection. Employees shall not duplicate software programs and any Employee who unlawfully duplicates software may be subject to criminal prosecution or civil damages. No Employee shall install, use, copy, alter or distribute these programs except as permitted by law and only to the extent permitted by the contract or license agreement between the City and the owner.

Employees learning of any misuse of software must immediately notify their Department Director. City Equipment shall not be used to send (upload) or receive (download) copyrighted materials, trade secrets, proprietary financial information, or similar materials without prior authorization.

Section 7. Backup Copies

Employees may not keep any backup copies of work done for the City when they separate from the City. Employees must obtain written permission from their Department Director to download and retain samples of their work. Downloading may occur only in the presence of the Employee's Supervisor. Employees are prohibited from keeping a copy of proprietary information, data or programs upon separation.

Section 8. Installation of Software

The integrity of City Equipment is vital to the City's operations. Employees may not download or install any program onto City Equipment without the express consent of their Department Director and the IT Division Manager. When in doubt, Employees must seek permission prior to taking any action that could jeopardize the integrity of City Equipment.

Section 9. Personal Use

Employees who are required to be available for City work continuously or outside of their regularly scheduled hours, may be authorized to utilize their City Equipment for personal use. Examples of such positions are those at the Department Director level and certain safety positions. The appropriate mix of personal/business cell phone usage will be determined at the Department Director level, with final authority on this issue resting with the City Manager or his/her designee. City Equipment may be operated or accessed for incidental personal use (e.g., web browsing, E-mailing, etc.)

on an Employee's break or meal period and with Supervisor approval provided that the use does not:

- A. Directly or indirectly interfere with the operation of other City Equipment;
- B. Involve any cost or expense to the City;
- C. Interfere with the Employee's performance of his/her duties or other obligations to the City;
- D. Involve creation or operation of a commercial, business, or political activity or website/blog; and
- E. Violate this Policy, or any other applicable law, rule or regulation.

Employees are reminded that personal use of City Equipment does not mean the Employee has any personal right of privacy in that use or related information and any records of City Equipment are subject to review by the City.

Section 10. Overtime Related to Communications Equipment

Non-exempt Employees shall not use City Equipment after their normal working hours without prior approval from an authorized Supervisor. The Fair Labor Standards Act (FLSA) requires that the City pay each Employee who is entitled to receive FLSA overtime for all hours worked. This provision does not apply to Employees who are exempt from FLSA overtime because of the executive, administrative, or professional nature of their job duties.

No time spent in any activity on City Equipment or Employee Equipment used for City Business may be done outside of a non-exempt Employee's scheduled work hours without advance approval from the Employee's Supervisor. Emergencies may arise that call for an exception to this rule. In emergencies, the Employee may perform the work, but must notify a Supervisor as soon as possible, and in no event later than the end of that day. If the Employee's Supervisor denies the request to work overtime, the Employee must comply with the Supervisor's directive and cease working overtime.

All time spent outside of the non-exempt Employee's scheduled hours on City Equipment or Employee Equipment used for City Business must be reported on official City forms so that the City may pay the Employee for that work. Non-exempt Employees may never choose to work and not request compensation. All legitimate overtime will be compensated.

Non-exempt Employees are required to record all work time on official City forms and to work overtime with prior approval. Failure to follow the City's overtime approval procedures will result in being paid for all legitimate work time, and being subject to

disciplinary action, up to and including termination for violating the overtime approval procedures.

Section 11. Violations

An Employee who violates this Policy is subject to disciplinary action, up to and including termination. Communications and data transmitted and/or stored on City Equipment or by a third party communications service provider in violation of this Policy will be disclosed in the context of disciplinary proceedings.

12/11/01

Revised February 2010

Revised August 2011

**AUTHORIZATION AND RELEASE
REGARDING CITY EQUIPMENT**

I, _____ have read, understand, and acknowledge the City's Policy regarding City Equipment, and Employee Equipment used for City Business. I understand and agree that the City may access my voice mail, E-mail, text, image, and data messages, and other electronically stored information on City Equipment under my control. I understand that searches of City Equipment may be conducted without advance notice in order to ensure the City Equipment is being used consistent with this Policy to facilitate transmittal of information related to the City's operations, and that **I have no expectation that any information stored or transmitted via any City Equipment or a third-party communications service provider accessed via City Equipment will be private.**

Accordingly, I hereby authorize any Electronic Communications Service to release to the City any information the City may request relating to electronic communications and/or any other form of instant or delayed messaging transmitted and/or received by myself on City Equipment. I also agree to search and immediately turn over any information the City may request relating to electronic communications and/or any other form of instant or delayed messaging transmitted and/or received by myself pertaining to City Business conducted on Employee Equipment. I understand that my failure to review and turn over information related to City Business stored on Employee Equipment may result in my discipline, up to and including termination.

I hereby release, and discharge the City and the person, firm, company, corporation or other third-party to whom this authorization is directed, including their agents, representatives and employees, from any and all liability of every nature and kind arising out of their providing the information, records and other matters referenced above relating to City Equipment pursuant to this authorization.

I further understand, acknowledge and agree that I will operate and use City Equipment and Employee Equipment when used for City Business according to this Policy. I understand and acknowledge that failure to comply with this Policy will result in discipline, up to and including termination.

A photocopy of this authorization and release shall be accepted with the same validity as the original.

Employee Signature

Date