

## OFFICE OF THE CITY ATTORNEY

### RECORD RETENTION AND DESTRUCTION POLICY

The City Attorney hereby adopts this Record Retention and Destruction Policy pursuant to Chapter 8 of the San Francisco Administrative Code. This policy supersedes all previous record retention and destruction policies issued by this office. This policy covers all records and documents, regardless of physical form or characteristics, made or received by the City Attorney's Office in connection with the transaction of public business. The purpose of this policy is to provide a system for managing the records of the City Attorney's Office, to safely store and retain those records that need to be retained, to comply with all applicable legal requirements regarding document retention and destruction, and to identify and establish guidelines for the destruction of those documents that are obsolete or for which retention is otherwise not required.

#### A. RETENTION POLICY

The City Attorney's Office shall retain documents for the period of their immediate or current use, unless longer retention is necessary to comply with contractual or legal requirements, the City Attorney has determined that a longer retention period is required for historical reference, or for other purposes as set forth below. For record retention and destruction purposes, the term "record" is defined as set forth in Section 8.1 of the San Francisco Administrative Code.<sup>1</sup> Documents and other materials that do not constitute "records" under that section, including those described below in Category 4, may be destroyed when no longer needed, unless otherwise specified. Where appropriate, and with the City Attorney's written approval, team leaders may establish team retention policies that call for the retention of specific types of records for periods longer than the otherwise applicable period set forth in this policy.

The records and documents of the City Attorney's Office shall be classified for purposes of retention and destruction as follows:

**Category 1: Permanent Retention.** Records that are permanent or essential shall be retained and preserved permanently.

- **Permanent records.** Permanent records are records required by law to be permanently retained and that are ineligible for destruction unless they are microfilmed or placed on an optical imaging system, with the film or tape placed in a State-approved storage vault, and a copy delivered to the City Attorney's Office. Admin. Code Section 8.4. Once these measures are followed, the original paper records may be destroyed. Duplicate copies of permanent records may be destroyed whenever they are no longer necessary for the efficient operation of the City Attorney's Office. Examples of permanent records include bond issues and annual reports.

- **Essential records.** Essential records are records necessary for the continuity of government and the protection of the rights and interests of individuals.

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<sup>1</sup> Section 8.1 of the Administrative Code states that "[r]ecords . . . shall mean such paper, book, photograph, film, sound recording, map, drawing or other document, or any copy thereof, as has been made or received by the department in connection with the transaction of public business and may have been retained by the department as evidence of the department's activities, for the information contained therein, or to protect the legal or financial rights of the City and County or of persons directly affected by the activities of the City and County."

Admin. Code Section 8.9. Examples of essential records include numbered City Attorney opinions, significant letter opinions and client advice letters.

**Category 2: Current Records.** Current records are records that for convenience, ready reference or other reasons are retained in the office space and equipment of the City Attorney's Office. Examples of current records include active litigation and claims files, chronological files, work assignment files, administrative files and personnel files. Current records shall be retained as follows:

- **Where retention period specified by law.** Where federal, state, or local law prescribes a definite period of time for retaining certain records, the City Attorney's Office will retain the records for the period specified by law. Examples of records required to be maintained for a specific period include copies of Conflict of Interest Form 700, which must be retained for 7 years pursuant to Government Code § 81009(e), and accident-injury reports, which must be retained for 5 years pursuant to 29 C.F.R § 1404.6.

- **Where no retention period specified by law.** Where no specific retention period is specified by law, the retention period for records that the department is required to retain shall be as specified in the attached Record Retention and Destruction Schedule. Records shall be retained for a minimum of two years, although such records may be treated as "storage records" and placed in storage at any time during the applicable retention period.

**Category 3: Storage Records.** Storage records are records that are retained off-site. Storage records are subject to the same retention requirements as current records, but are maintained at the City's off-site storage facility, or in storage facilities provided to the City Attorney by the Airport, the Port and Hetch Hetchy. Examples of storage records include closed case files and exhibits.

**Category 4: No Retention Required.** Documents and other materials that are not "records" as defined by Admin. Code section 8.1 need not be retained unless otherwise specified by local law. 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 office, or have no legal significance may be destroyed when no longer needed. Examples include materials and documents generated for the convenience of the person generating them, draft documents (other than drafts of agreements subject to disclosure pursuant to Administrative Code section 67.24(a)) that have been superseded by subsequent versions, or rendered moot by departmental action, and duplicate copies of records that are no longer needed. Specific examples include telephone message slips, miscellaneous correspondence not requiring follow-up or departmental action, notepads, e-mails that do not contain information otherwise required to be retained under this policy, and library materials that have been superseded or that are no longer needed.

With limited exceptions, no specific retention requirements are assigned to documents in this category. Instead, it is up to the originator or recipient to determine when the document's business utility has ended.

## **B. RECORDS NOT ADDRESSED IN THE RECORD RETENTION SCHEDULE**

Records and other documents or materials that are not required to be retained by law, and are not expressly addressed by the attached schedule may be destroyed at any

time provided that they have been retained for the periods prescribed for substantially similar records. Current or storage records may be destroyed five years after they were created if they have served their purpose and are no longer required for any public business or public purpose, and destruction of the record has been approved by the Controller (for records pertaining to financial matters), the City Attorney (for records having legal significance) and the Retirement Board (for payroll checks, time cards and related documents). Admin. Code section 8.3.

### **C. STORAGE OF RECORDS**

Records may be stored in the City Attorney's office space or equipment if the records are in active use or are maintained in the office for convenience or ready reference. Examples of active files appropriately maintained in the City Attorney's office space or equipment include active chronological files, research and reference files, active litigation files, administrative files and personnel files. Inactive records, for which use or reference has diminished sufficiently to permit removal from the City Attorney's office space or equipment, may be sent to the City's off-site storage facility or maintained in the City Attorney's storage facility.

Storage of records imposes considerable costs on the City Attorney's Office. Accordingly, records should be stored only when necessary, and should be promptly destroyed once the applicable retention period has passed and the records are no longer needed.

### **D. HISTORICAL RECORDS**

Historical records are records that the City Attorney has determined are of historical interest or significance because of their age or research value even though the records are no longer of use to the City Attorney's Office. Historical Records may not be destroyed except in accordance with the procedures set forth in Administrative Code section 8.7.

### **E. DESTRUCTION OF RECORDS**

It shall be the policy of the City Attorney's Office that once the requisite retention period for a record has passed, the record shall be destroyed unless there are particular circumstances that dictate that the record be retained. Team leaders may decide that records otherwise subject to this schedule are of sufficient importance to the mission of that team that the records should be retained.

It shall be the policy of the City Attorney's Office to work with contractors providing off-site storage of records to ensure that records are destroyed once the requisite time period for retention has passed.

### **F. RECORDS RELATING TO PENDING CLAIMS**

It shall be the policy of the City Attorney's Office that records relating to pending claims that are otherwise eligible for destruction pursuant to this policy shall not be destroyed without the prior approval of the City Attorney, the Chief Deputy City Attorney, the Managing Attorney, or the Chief Trial Deputy.

## **G. RECORDS RELATING TO EMERGENCY/DISASTER AND COST RECOVERY**

Records relating to Emergencies/Disasters and Cost Recovery for the Federal Emergency Management Agency (FEMA) and California Governor's Office of Emergency Services (CAL OES) programs and activities are governed by Code of Federal Regulations 44 C.F.R. § 13.42. Pursuant to 44 C.F.R. § 13.42, the City Attorney's Office must retain any and all records relating to cost recovery documentation incurred during an emergency or disaster for three (3) years after the State has closed the claim by the City. The California Code of Regulations also requires the retention of all financial and program records related to cost or expenditures eligible for state financial assistance for three years. (19 C.C.R. § 2980(e)). The City Attorney's Office shall retain all records relating to emergency/disaster recovery costs for three (3) years from the date the Project Worksheet file is officially closed by receipt of a closure letter from the State of California. However, if State or Federal government requires a longer retention period, the Controller's Office will issue specific rules for file retention on any given disaster.

## **H. BACKUP TAPES OR SIMILAR ARCHIVAL SYSTEMS**

It shall be the policy of the City Attorney's Office that back-up tapes serve the limited purpose of providing a means of recovery in cases of disaster, departmental system failure, or unauthorized deletion. They are not available for departmental use except in these limited situations. Electronic records such as e-mails that an employee has properly deleted under the department's records retention and destruction policy but that remain on back-up tapes are analogous to paper records that the department has lawfully discarded but may be found in a City owned dumpster. Neither the Public Records Act nor the Sunshine Ordinance requires the City to search the trash for such records, whether paper or electronic.

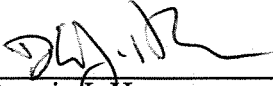
## **I. EMAIL POLICY**

The City Attorney's Office provides an email system to its employees as a convenient and efficient medium of communication. Email is intended and designed to be a tool of communication, but the email system is not a medium for storage of information or for any of the Office's records.


The City Attorney's Office staff must determine with regard to each email whether the attached Retention and Destruction Schedule requires the retention of a particular record. If the Schedule requires retention of the email, staff must retain it in accordance with the schedule and delete it from the email system. If the Schedule does not require retention of the email the staff must delete it as soon as it is no longer necessary for the discharge of official duties.

**APPROVALS**

This Record Retention and Destruction Policy and attached Schedule are hereby approved:


  
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Dennis L. Herrera  
City Attorney

12/17/15  
Date

  
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Steve Kawa  
Deputy Chief of Staff  
Office of the Mayor


12/18/15  
Date

**Approved as to Records Relating to Financial Matters:**

Ben Rosenfield  
Controller  
  
\_\_\_\_\_  
Controller staff

12.17.15  
Date

**Approved as to Records Relating to Payroll Matters:**

  
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Jay Huijsh  
Executive Director  
Retirement System

Date 12/23/2015

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