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## **Electronic Communication Among City Officials: A Valuable Tool in Need of Careful Guidance**

### **Issue**

To what extent do the cities in San Mateo County facilitate, yet moderate, electronic communication among elected and appointed officials without violating the Brown Act or the Public Records Act?

### **Background**

The Brown Act is California's open public meeting law. It was enacted in 1953 as necessary government reform to limit perceived and sometimes real "backroom" deal-making and to make local government decision-making more transparent to the public. The basic provision of the code is: "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter." Government Code Section 54953(a)

To an ever-increasing degree, city governments in San Mateo County have found the use of electronic communication (e-mail and attachment documents) to greatly facilitate the dissemination of information. It is much faster and cheaper to move and store large amounts of information electronically. With such ease, however, come pitfalls such as creating duplicate files subject to public disclosure under the Public Records Act and the ease with which an appearance of an illegal serial meeting can be created via email communication between officials.

## Investigation

The 2006-2007 San Mateo County Civil Grand Jury (Grand Jury) conducted an investigation to determine the degree to which San Mateo County cities have:

- assigned specific email accounts to elected and appointed officials
- adopted policies for the use of those accounts
- adopted records retention policies to control document proliferation and establish accountability

The Grand Jury conducted selected interviews and requested information from all cities in San Mateo County and received varied responses, many of which indicated considerable effort to be proactive in these areas, particularly the Town of Woodside. It should be noted that the bulk of responses were via email with attachments.

## Findings

**Proposition 59 of 2004**— the right of the people to open meetings and public records is now in the State Constitution, (Cal. Const. Article I Section 3(b)(1)) which reads:

“The people have the right of access to information concerning the conduct of the peoples’ business; therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”

### **The Public Records Act**

“Public Records” 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. The public can make requests to inspect or copy public records. Failure to comply with the Public Records Act can subject a public entity to litigation.

### **The Brown Act**

The Brown Act requires legislative bodies or local agencies to conduct the public business in a public meeting, of which proper notice has been given. A meeting is a “...congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate on any matter within its jurisdiction”.

Serial meetings are covered by the Brown Act if the purpose is to develop a concurrence as to action to be taken. A majority of members may not “develop a concurrence as to action” on business through serial meetings, intermediaries, communication, or other subterfuge.

Failure to comply with the Brown Act may subject a public entity to litigation and its members to criminal prosecution.

Most cities and towns were found to have created official email accounts for elected officials but few had done so for appointed officials such as Planning Commissioners.

Several cities and towns had developed record retention policies and one, the Town of Woodside, had developed an email policy for council members.

Most cities and towns have written policies for the use of official email accounts.

Most cities and towns do not have up-to-date policies that address the retention and storage of electronic documents.

## **Conclusions**

All California cities face a complicated set of issues when attempting to balance the benefits of electronic communication and storage against the pitfalls of Brown Act constraints and Public Records Act obligations.

In the case of Brown Act violations, officials who engage in prohibited serial meetings face the possibility of criminal prosecution or other damaging consequences. The point at which a serial meeting becomes illegal, however, is not clear and as case law evolves ongoing legal guidance should be sought.

The California Public Records Act mandates citizen access to records including all communications related to public business “regardless of physical form or characteristics, including any writing, picture, sound, or symbol, whether paper, magnetic or other media”. Government Code Section 6252(e)

The Public Records Act, while praiseworthy in its goals, can constitute a significant burden on staff time (the cost of which is not recoverable), document duplication cost (partially recoverable), and legal costs (not recoverable) to determine which information is public record and whether any Public Record Act exemptions apply. Additionally, litigation discovery trends specifically address the production of electronic documents, including the specific formats in which such document must be produced. This burden is, or should be, a strong motivation for enacting record retention policies that address redundancy issues and establish legally required document retention time periods.

Responding to a Public Records Request usually includes the production of email sent or received relating to the requested subject matter. Consequently, council members or their legal representatives must review their email files to sort out personal communication versus public communication. If the Council member uses his or her personal email account for city matters, such searching is more time consuming and potentially intrusive. While the issuance of official email addresses for City Council members is a rapidly increasing practice, policies for using such accounts are not as common.

Planning commissioners are subject to the Brown Act, and their deliberations could be a problem if care is not taken.

The financial downside to cities faced with burdensome requests and aggressive litigation is substantial and merits focused, proactive attention. Most San Mateo County cities are, generally speaking, moving in the right direction by adopting separate email accounts for elected officials and by developing and adopting electronic records retention policies. Interpretation of the Brown Act is subject to change due to evolving case law, making it difficult to recommend a one-size-fits-all solution for all cities. Each city should monitor legal developments concerning the Brown Act.

Advances in communication using electronic media such as email have made communication among elected officials convenient and efficient. Certain forms of such communication, however, can be considered a prohibited serial meeting (as opposed to an allowable serial meeting) and thus violate the Brown Act. It is important for elected officials to understand the potential pitfalls as well as the benefits of email communication.

## **Recommendations**

The Grand Jury recommends that the Council of every City or Town in San Mateo County:

- 1) Issue official email accounts to its council members.
- 2) Adopt email policies that require council members to use such email accounts for all city or town business.
- 3) Consider providing official email accounts to planning commissioners and applying the policies adopted in #2 above.
- 4) Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.
- 5) Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials as required under AB 1234 (Ethics Training for Local Officials).



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## **Electronic Communication Among City Officials: A Valuable Tool in Need of Careful Guidance**

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Most cities and towns do not have up-to-date policies that address the retention and storage of electronic documents.

## **Conclusions**

All California cities face a complicated set of issues when attempting to balance the benefits of electronic communication and storage against the pitfalls of Brown Act constraints and Public Records Act obligations.

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Planning commissioners are subject to the Brown Act, and their deliberations could be a problem if care is not taken.

The financial downside to cities faced with burdensome requests and aggressive litigation is substantial and merits focused, proactive attention. Most San Mateo County cities are, generally speaking, moving in the right direction by adopting separate email accounts for elected officials and by developing and adopting electronic records retention policies. Interpretation of the Brown Act is subject to change due to evolving case law, making it difficult to recommend a one-size-fits-all solution for all cities. Each city should monitor legal developments concerning the Brown Act.

Advances in communication using electronic media such as email have made communication among elected officials convenient and efficient. Certain forms of such communication, however, can be considered a prohibited serial meeting (as opposed to an allowable serial meeting) and thus violate the Brown Act. It is important for elected officials to understand the potential pitfalls as well as the benefits of email communication.

## **Recommendations**

The Grand Jury recommends that the Council of every City or Town in San Mateo County:

- 1) Issue official email accounts to its council members.
- 2) Adopt email policies that require council members to use such email accounts for all city or town business.
- 3) Consider providing official email accounts to planning commissioners and applying the policies adopted in #2 above.
- 4) Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.
- 5) Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials as required under AB 1234 (Ethics Training for Local Officials).



**City of Menlo Park  
701 Laurel St.  
Menlo Park, CA 94025  
650-330-6600**

July 13, 2007

Honorable John L. Gradsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

**Subject: Response to Grand Jury Report, Electronic Communication Among City Officials**

Dear Judge Gradsaert:

As requested, the City of Menlo Park is responding to the Superior Court's letter of June 21, 2007. The City concurs with the findings of the Grand Jury Report titled Electronic Communication Among City Officials.

The following provides the City's response to the five specific recommendations contained in the report.

**1. Issue official email accounts to its council members.**

The recommendation has been implemented. The City has had this in place for a number of years.

**2) Adopt email policies that require council members to use such email accounts for all city or town business.**

The recommendation will not be implemented because it is considered impractical. City Council members are involved in a variety of activities prior to becoming elected officials. They have a need to communicate with friends, neighbors, business acquaintances, and groups they have affiliated themselves with. Email communications are common. This need does not end upon being elected to office. Short of cancelling all of their personal email accounts upon being elected to office it would not be

possible to prevent people from sending them emails which bring up city business.

Implementing the recommendation would also require that a policy defines the types of content that was considered city business. Our elected officials have an ongoing need to communicate with constituents and advisors on political matters. If a council member were running for reelection, would email communications with their campaign committee be considered city business? Clearly council members have a right to privacy in their efforts to develop political strategies. Trying to define what is political and what is business into an enforceable policy is impractical.

**3) Consider providing official email accounts to planning commissioners and applying the policies adopted in #2 above.**

The recommendation will not be implemented because it is considered impractical. The City's Planning Commissioners are unpaid volunteers. The City currently does not have the facilities to provide office space with computer access, and it is unreasonable to assume that every volunteer that is appointed comes equipped with a computer and internet access. The City does keep as public records any written communications to or from the City and its Planning Commissioners including email communications.

**4) Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.**

The recommendation has been implemented. The City has had this in place for a number of years.

**5) Include updates on legal developments related to the Brown Act and the Public Records Act during training for officials as required under AB 1234 (Ethics Training for Local Officials).**

The recommendation will not be implemented because it is considered impractical. The City has fully implemented the requirements of AB 1234. It also went beyond the minimum requirements of the law by sending many of its senior staff members to the training. Since the law was passed, a number of qualified trainers have offered ethics training classes that comply with State requirements. The City found it efficient and convenient to use these outside training resources so classes could be offered at different times and dates. Adding content to the existing training program would preclude us from using outside resources unless a custom program was developed.

The City does monitor legal developments with the Brown Act and Public Records Act through its City Attorney. Significant developments are already communicated to the City Council as written communications from the City Attorney. The City also provides training on these important public laws to new Council Members through an orientation process when they first take office.

Thank you for the opportunity to comment on the subject Grand Jury Report. If you have questions regarding the City's responses, please contact me at

650-330-6610.

Sincerely,

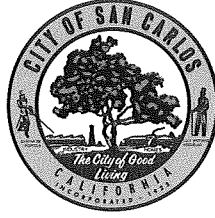
Kent Steffens  
Interim City Manager

**Verdell Woods**  
**Secretary, City Manager's Office**  
**City of Menlo Park**  
**701 Laurel Street**  
**Menlo Park, CA 94025**  
**650-330-6600 (phone)**  
**650-328-7935 (fax)**  
**[vwoods@menlopark.org](mailto:vwoods@menlopark.org)**

# CITY OF SAN CARLOS

## CITY COUNCIL

THOMAS J. DAVIDS, MAYOR  
BRADFORD LEWIS, VICE MAYOR  
ROBERT GRASSILLI  
MATTHEW GROCOTT  
INGE TIEGEL DOHERTY



CITY COUNCIL  
600 ELM STREET  
SAN CARLOS, CALIFORNIA 94070-3085

TELEPHONE: (650) 802-4219

FAX: (650) 595-6719

WEB: <http://www.cityofsancarlos.org>

July 10, 2007

Honorable John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center; 2<sup>nd</sup> floor  
Redwood City, CA 94063-1655

Dear Judge Grandsaert,

Please accept this as the City of San Carlos' formal response to the June 21, 2007 letter from the Superior Court communicating comments made by the Civil Grand Jury about "Electronic Communication Among City Officials."

The City has reviewed the Grand Jury comments and I would offer these responses on behalf of the City Council and the City of San Carlos as the Mayor of San Carlos:

### ***Recommendation # 1***

#### **Issue official email accounts to City Council Members**

I am pleased to inform you that the City of San Carlos has made official email accounts available to all members of the City Council since the City began using email almost 20 years ago. We plan to continue that practice.

### ***Recommendation # 2***

#### **Adopt email policies that require council members to use such email accounts for all city or town business**

I am providing copies of the Grand Jury's report to all members of the City Council so that they are aware of your recommendation in this area.

### ***Recommendation # 3***

#### **Consider providing official email accounts to planning commissioners and applying the policies recommended in item # 2.**

To date, the City has not heard requests for the ability to send email messages to Planning Commissioners. We will research the cost of providing email accounts to the Planning Commissioners and examine whether there is interest in including the Planning Commissioners in the City email program.

***Recommendation # 4***

**Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.**

The City of San Carlos has long established record retention policies and programs for all City records and documents that include email retention. In fact, neighboring cities and agencies have used the San Carlos retention policy as a model to follow for their practices for several years.

***Recommendation # 5***

**Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials as required under AB 1234 (Ethics Training for Local Officials).**

Members of the City Council, standing City Commissions and Boards and designated City Staff have taken the AB 1234 training. Copies of their certificates of completion are available in the Office of the City Clerk.

Thanks for this opportunity to share what's being done in the area of Council email accounts, records management and retention with the Civil Grand Jury.

Sincerely,

A handwritten signature in cursive script that reads "T. Davids".

Thomas J. Davids  
Mayor

Cc: City Council  
City Attorney  
City Manager



The Town of  
Woodside

July 25, 2007

The Honorable John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

**RE: 2006-07 GRAND JURY REPORT - ELECTRONIC COMMUNICATION AMONG CITY OFFICIALS**

Dear Judge Grandsaert:

The Town Council of the Town of Woodside reviewed the referenced Grand Jury Report during its meeting of July 24, 2007. On behalf of the Town Council, I would like to offer the following.

The Town Council agrees with all of the findings in the Grand Jury's report on electronic communication and is gratified that the Grand Jury has specifically noted the Town of Woodside's proactive stance in this area. There are five recommendations included in the Grand Jury Report:

1. Issue official e-mail accounts to its council members.
2. Adopt email policies that require council members to use such email accounts for all city or town business.
3. Consider providing official e-mail accounts to planning commissioners and applying the policies adopted in #2.
4. Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.
5. Include updates on legal developments relating to the Brown Act and the Public Records Act during ethics training for officials as required under AB 134 (Ethics Training for Local Officials).

P.O. Box 620005  
2955 Woodside Road  
Woodside, CA 94062

The Town has already fully implemented recommendations 1, 2, 4, and 5. Our Town Attorney and Town Manager are reviewing the current records retention policy, which was adopted in the mid-1990's to ensure its appropriateness. Our Town Attorney keeps us fully apprised of legal developments that pertain to the Brown Act and the Public Records Act and these subjects are included in orientation sessions for all elected and appointed officials, as well. We will consider implementing recommendation 3, although at this time we are not aware that members of the Town's Planning Commission use their personal and/or business e-mail accounts in the course of undertaking Town business.

The Town greatly appreciates the efforts of the Grand Jury. On behalf of the Town Council, I would like to extend our thanks for an opportunity to respond to the work of the 2006-07 Grand Jury. Please do not hesitate to call our Town Manager, Susan George, should you require any further information.

Sincerely,

A handwritten signature in cursive script that reads "Sue Boynton".

Sue Boynton  
Mayor

650-851-6790  
Fax: 650-851-2195  
townhall@woodsidetown.org

GRAOS  
gru

# TOWN of PORTOLA VALLEY

COUNCIL:  
Ted Driscoll - Mayor  
Maryann Moise Derwin - Vice Mayor  
Richard T. Merk  
Ed Davis  
Steve Toben

July 24, 2007

TOWN OFFICERS:  
Angela Howard  
Town Administrator  
Sandy Sloan  
Town Attorney

Honorable John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

**Re: Response to 2006 – 2007 Grand Jury Report**

Dear Honorable Judge Grandsaert:

The Town Council ("Respondent") for the Town of Portola Valley ("Town") has reviewed the recommendations in the 2006 – 2007 Grand Jury report that affect the Town. Respondent offers the following responses:

**ELECTRONIC COMMUNICATION AMONG CITY OFFICIALS: A VALUABLE TOOL IN NEED OF CAREFUL GUIDANCE**

**Recommendation 1:**

Issue official email accounts to its council members.

**Response 1:**

Respondent agrees with the finding. The recommendation has been implemented and council members who wish to use email are issued official email accounts.

**Recommendation 2:**

Adopt email policies that require council members to use such email accounts for all city or town business.

**Response 2:**

Respondent agrees with the finding. The recommendation has not yet been implemented, but will be implemented within the year.

**Recommendation 3:**

Consider providing official email accounts to planning commissioners and applying the policies adopted in #2 above.

**Response 3:**

Respondent will consider this finding. Providing email accounts to planning commissioners may be administratively burdensome for a town as small as Portola Valley, but the subject will be discussed by the Town Council.

**Recommendation 4:**

Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.

**Response 4:**

Respondent agrees with the finding. The Town has an email retention policy and is in the process of updating its record retention policies. Respondent expects the recommendation will be implemented within the year.

**Recommendation 5:**

Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials as required under AB 1234 (Ethics Training for Local Officials).

**Response 5:**

Respondent agrees with the finding and the recommendation has been implemented.

**CJIS INFORMATION LETTER. NOTIFICATION OF INTERIM REVISED FEES FOR FINGERPRINT-BASED AND NAME-BASED CRIMINAL HISTORY RECORD INFORMATION CHECKS.** The Town thanks the Grand Jury for bringing this to our attention.

Please let me know if you require additional information.

Sincerely,



Ted Driscoll  
Mayor

cc: Town Council  
Town Administrator  
Town Attorney



CITY COUNCIL 2007

RICHARD A. GARBARINO, MAYOR  
PEDRO GONZALEZ, VICE MAYOR  
MARK N. ADDIEGO, COUNCILMEMBER  
JOSEPH A. FERNEKES, COUNCILMEMBER  
KARYL MATSUMOTO, COUNCILMEMBER

BARRY M. NAGEL, CITY MANAGER

August 20, 2007

Honorable John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center; 2<sup>nd</sup> floor  
Redwood City, CA 94063-1655

**RE: Comments on the Findings and Recommendations of the Grand Jury  
Pertaining to Electronic Communications Among City Officials.**

Dear Judge Grandsaert,

Please accept this as the formal response of the City of South San Francisco ("City") to the June 21, 2007 letter from the Superior Court communicating the Civil Grand Jury's recommendations on "Electronic Communication Among City Officials."

The City has reviewed the Grand Jury comments and I would offer these responses on behalf of the City Council and the City of South San Francisco as the Mayor:

***Recommendation # 1***

**Issue official email accounts to City Council Members**

The City agrees with the finding, has implemented such a policy, and plans to continue doing so.

***Recommendation # 2***

**Adopt email policies that require council members to use such email accounts for all city or town business**

The City disagrees partially with the recommendation in that it seeks to require Council members to use City-issued email accounts for all City-related business in the absence of a requirement by State law. The City does, however, make City-issued email accounts available to Council members for their use.

***Recommendation # 3***

**Consider providing official email accounts to planning commissioners and applying the policies recommended in item # 2.**

The City partially disagrees with the finding because the City has not received any requests from our constituents to issue accounts to Planning Commissioners. As such, the City currently does not provide Planning Commissioners with accounts. We will research the cost of providing email accounts to the Planning Commissioners and examine whether there is interest in including the Planning Commissioners in the City email program.

***Recommendation # 4***

**Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.**


The City agrees with this recommendation and has long-established record retention policies and programs for all City records and documents, which include email retention.

***Recommendation # 5***

**Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials as required under AB 1234 (Ethics Training for Local Officials).**

Members of the City Council, standing City Commissions and Boards and designated City Staff have completed AB 1234 training. Copies of their certificates of completion are available in the City Clerk's office.

Respectfully submitted,



Richard Garbarino, Mayor  
City of South San Francisco

c: City Council  
Sky Woodruff, Assistant City Attorney  
Barry M. Nagel, City Manager



August 14, 2007

Honorable John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 9063-1655

Dear Judge Grandsaert:

Thank you for the opportunity to respond to the 2006-07 Grand Jury report on "Electronic Communication Among City Officials." The San Bruno City Council has reviewed the report and provides the following comments and responses to the recommendations contained in the report.

**Recommendation #1 – Issue official e-mail accounts to City Council members**

The City of San Bruno makes official e-mail accounts available to each member of the City Council. Each member of the City Council uses e-mail on a regular basis for official City business. This practice has been in place for many years.

**Recommendation #2 – Adopt e-mail policies that require Council members to use such e-mail accounts for all city or town business**

As indicated above, San Bruno City Council members regularly use their City e-mail accounts for official City business. City staff has provided a copy of the Grand Jury report to each City Council member so that they are familiar with the Grand Jury's recommendations on this topic. Additionally, the City will review its e-mail policy for any potential changes to better reflect the Grand Jury's recommendations.

**Recommendation #3 – Consider providing official e-mail accounts to planning commissioners and applying the policies recommended in item #2**

The Planning Commission has a joint e-mail account address that is provided to citizens. Copies to any communications through this address are provided at public hearings as appropriate. The City is not aware of any request or need on the part of the Planning Commission for issuance of individual City e-mail accounts. The City will review this matter further.

**Recommendation #4 – Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods**

The City of San Bruno has established record retention policies that have been in effect for some years. The City will review the policies to ensure that they adequately address the important issue of e-mail documents.

**Recommendation #5 – Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials as required under AB 1234 (Ethics Training for Local Officials)**

City Council members, Planning Commissioners, and executive City staff members have completed the required AB 1234 training. The City intends to maintain compliance with the AB 1234 requirements. Copies of the AB 1234 training certificates for each of the City Council members are attached to this letter.

In conclusion, the City remains committed to the principles and the practice of open, accessible government and we believe that our policies and practices in the area of electronic communication reflect this commitment. Again, the City appreciates the Grand Jury's recommendations in the area of electronic communications. We do note however, that these emerging means of communications do not alter the long-standing protections in the law such as those that reflect deliberative process or attorney-client privilege.

Thank you again for the opportunity to review and respond to the Grand Jury's report, its findings, and recommendations.

Sincerely,

Larry Franzella  
Mayor

Attachment: AB 1234 training certificate (5)



# INSTITUTE FOR LOCAL GOVERNMENT

1400 K Street, 4<sup>th</sup> Floor, Sacramento, California 95814 ~ www.ca-ilg.org

## Public Service Ethics Education Proof of Participation Certificate

# RECEIVED

APR 07 2006

City Clerk's Office

**Participant Name:** Larry Franzella

**Course Date & Time:** Thursday April 6, 2006, 7:00 – 9:00 p.m.

**Location:** Millbrae Community Room, Milbrae

**Eligible Credit:** 2 Hours (Requires Attendance for Entire Session)

This course is an overview course on all public service ethics issues necessary to satisfy the requirements of Article 2.4 of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code, including the following:

- Laws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws.
- Laws relating to claiming perquisites ("perks") of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.
- Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.
- Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members; and
- General ethical principles relating to public service.

The Institute for Local Government affirms that this course satisfies the guidelines issued by the Fair Political Practices Commission and Attorney General for course sufficiency and accuracy.

To be completed by participant:

By signing below, I certify that I signed in at this session, participated in the activity described above and am entitled to claim 2 ethics education credit hour(s).

Participant Signature

*NOTE TO PARTICIPANT:* Please provide a copy of this proof of participation to the custodian for such records at your agency. In addition, we recommend you make a copy of this proof of participation for your own records to retain for at least five years. **These certificates are only available at this program; duplicates will not be issued.**



# INSTITUTE FOR LOCAL GOVERNMENT

1400 K Street, 4<sup>th</sup> Floor, Sacramento, California 95814 ~ www.ca-ilg.org

## Public Service Ethics Education Proof of Participation Certificate

**Participant Name:**

**Course Date & Time:** Thursday April 6, 2006, 7:00 – 9:00 p.m.

**Location:** Millbrae Community Room, Millbrae

**Eligible Credit:** 2 Hours (Requires Attendance for Entire Session)

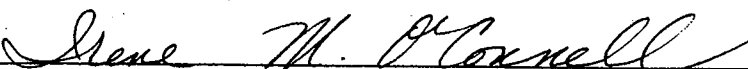
This course is an overview course on all public service ethics issues necessary to satisfy the requirements of Article 2.4 of Chapter 2 of Part 1. of Division 2 of Title 5 of the Government Code, including the following:

- Laws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws.
- Laws relating to claiming perquisites ("perks") of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.
- Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.
- Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members; and
- General ethical principles relating to public service.

The Institute for Local Government affirms that this course satisfies the guidelines issued by the Fair Political Practices Commission and Attorney General for course sufficiency and accuracy.

To be completed by participant:

By signing below, I certify that I signed in at this session, participated in the activity described above and am entitled to claim 2 ethics education credit hour(s).

  
Participant Signature

**NOTE TO PARTICIPANT:** Please provide a copy of this proof of participation to the custodian for such records at your agency. In addition, we recommend you make a copy of this proof of participation for your own records to retain for at least five years. **These certificates are only available at this program; duplicates will not be issued.**

**CERTIFICATE OF ATTENDANCE FOR ETHICS TRAINING (AB 1234)**

To Be Completed By The Provider

Provider: Meyers, Nave, Riback, Silver & Wilson

Subject Matter/Title: AB 1234 Ethics Training

Date and Time: March 9, 2006, 6:00-8:00 p.m.

Location: 33 Arroyo Drive, South San Francisco, CA 94080

Length of Activity: 2 hrs

---

To Be Completed After Participation in the Above-Named Activity

By signing below, I certify that I participated in the above described ethics training in accordance with the requirements of Gov. Code §§ 53234 – 53235.2:

**TOTAL HOURS: 2**

Print Name: JAMES P. RUANE Signature: 

**REMINDER:** A local agency shall maintain these records for at least five (5) years after local officials receive the training. These records are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

**Jim Ruane**

City of San Bruno

**meyers | nave**  
professional law corporation

**CERTIFICATE OF ATTENDANCE FOR ETHICS TRAINING (AB 1234)**

To Be Completed By The Provider

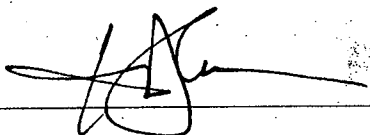
Provider: Meyers, Nave, Riback, Silver & Wilson  
Subject Matter/Title: AB 1234 Ethics Training  
Date and Time: March 9, 2006, 6:00-8:00 p.m.  
Location: 33 Arroyo Drive, South San Francisco, CA 94080  
Length of Activity: 2 hrs

---

To Be Completed After Participation in the Above-Named Activity

By signing below, I certify that I participated in the above described ethics training in accordance with the requirements of Gov. Code §§ 53234 – 53235.2:

**TOTAL HOURS: 2**

Print Name: KEN IBARRA Signature: 

**REMINDER:** A local agency shall maintain these records for at least five (5) years after local officials receive the training. These records are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).



**CERTIFICATE OF ATTENDANCE FOR ETHICS TRAINING (AB 1234)**

To Be Completed By The Provider

Provider: Meyers, Nave, Riback, Silver & Wilson  
Subject Matter/Title: AB 1234 Ethics Training  
Date and Time: March 9, 2006, 6:00-8:00 p.m.  
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Length of Activity: 2 hrs

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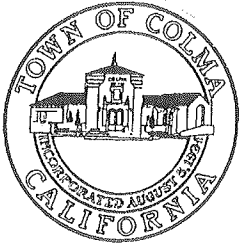
To Be Completed After Participation in the Above-Named Activity

By signing below, I certify that I participated in the above described ethics training in accordance with the requirements of Gov. Code §§ 53234 – 53235.2:

**TOTAL HOURS: 2**

Print Name: Rico E. Medina Signature: Rico E. Medina

**REMINDER:** A local agency shall maintain these records for at least five (5) years after local officials receive the training. These records are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).



## TOWN OF COLMA

1198 El Camino Real • Colma, California • 94014-3212  
Tel 650-997-8300 • Fax 650-997-8308

### City Council

August 30, 2007

Frossanna "Fro" Vallerga  
Mayor

Honorable John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center; 2<sup>nd</sup> floor  
Redwood City, CA 94063-1655

C. R. "Larry" Formalejo  
Vice Mayor

Helen Fiscaro  
Council Member

Joseph Silva  
Council Member

Joanne F. del Rosario  
Council Member

Dear Judge Grandsaert,  
  
Please accept this as the Town of Colma's formal response to the June 21, 2007 letter from the Superior Court communicating comments made by the Civil Grand Jury about "Electronic Communication Among City Officials."

City Treasurer  
Rae P. Gonzalez

The Town has reviewed the Grand Jury comments and I offer these responses on behalf of the City Council and the Town of Colma as the Mayor of Colma:

### City Officials

Diane McGrath  
City Manager

#### ***Recommendation # 1***

##### **Issue official email accounts to City Council Members**

Laura Allen  
Assistant City Manager

The Town of Colma agrees with the finding. The recommendation has been implemented. The Town of Colma has had official email accounts available to all members of the City Council since 2002.

Robert L. Lotti  
Chief of Police

#### ***Recommendation # 2***

##### **Adopt email policies that require council members to use such email accounts for all city or town business**

Roger Peters  
City Attorney

Town staff agrees with the finding and the Council will consider the recommendation at a regular meeting in the near future.

Richard Mao  
City Engineer

Andrea Ouse  
City Planner

#### ***Recommendation # 3***

##### **Consider providing official email accounts to planning commissioners and applying the policies recommended in item # 2.**

Brian Dossey  
Director of Recreation  
Services

The Town of Colma agrees with the finding. The Town of Colma does not have a Planning Commission so the implementation of this recommendation is not applicable.

#### ***Recommendation # 4***

##### **Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.**

The Town of Colma agrees with the finding. The recommendation has already been implemented. The Town of Colma has established record retention policies and programs for all Town records and documents that include email retention.

***Recommendation # 5***

**Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials as required under AB 1234 (Ethics Training for Local Officials).**

The Town of Colma agrees with the finding. The recommendation has already been implemented. In 2006, members of the City Council and designated City Staff took the AB 1234 training which included updates on the Brown Act and the Public Records Act. Council Members get regular updates on the Brown Act and Public Records Act in between trainings.

Thank you for this opportunity to share what is being done in the area of Council email accounts, records management and retention with the Civil Grand Jury.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frossanna Vallergera".

Frossanna Vallergera  
Mayor

Cc: City Council  
City Attorney  
City Manager



## The City of Burlingame

CITY COUNCIL  
CITY HALL — 501 PRIMROSE ROAD  
BURLINGAME, CALIFORNIA 94010-3997

TEL: (650) 558-7204  
FAX: (650) 556-9281  
WEB: [www.burlingame.org](http://www.burlingame.org)

September 5, 2007

Hon. John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2nd Floor  
Redwood City, CA 94063-1655

Re: Electronic Communication Among City Officials: A Valuable Tool in Need of Careful Guidance

Dear Judge Grandsaert:

Pursuant to Penal Code section 933, the Burlingame City Council provides the following comments to the 2006-2007 Civil Grand Jury report communicated by letter dated June 21, 2007.

The City of Burlingame acknowledges the findings of the Grand Jury and agrees with the conclusion of the report and with most of the report's recommendations.

1) The City currently has a group e-mail address for the entire City Council, which distributes e-mails to each of the councilmember's private e-mail boxes. The City Council is currently revising its protocols and procedures, and as part of that process, each councilmember will be provided with an official e-mail account using remote access technology.

2) The proposed protocols and procedures will encourage councilmembers to use the official e-mail accounts for "City business." However, the City Council does not believe that an elected official can or should be compelled to use only that account to receive or communicate regarding City business. First, an elected official must be able to conduct political and campaign business, and State law prohibits the use of City resources for such a purpose. Second, elected officials must have a means of receiving communications from constituents that are not open to public view; a complaint against another public officer should not go through a public system. Finally, no definition of "City business" has been adopted by the State nor generally accepted;

Honorable John Grandsaert

Re: Electronic Communication Among City Officials

September 5, 2007

Page 2

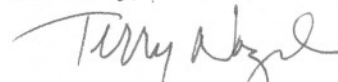
“City business” can mean the grand opening of a retail store, the passage of a bill in the United States Senate, or the local AYSO standings. The City has encouraged its councilmembers and commissioners to forward any e-mails received in private accounts that deal with matters pending before the Council to the City Clerk. However, until the State or a court reaches a better understanding of what City business means for public access purposes, this recommendation is problematic.

3) The City will be establishing official e-mail accounts for its planning commissioners. Because the Commission’s jurisdiction (as defined in the Brown Act) is more limited, City staff will be drafting a policy for inclusion in the Commission’s Rules of Procedure to require use of the official e-mail accounts for most communications regarding Commission matters, with the additional policy that communications received in private accounts that address pending planning matters be forwarded to the Director of Community Development for record-keeping.

4) The City has retention policies for its documents. However, while the Legislature has determined the retention periods for video surveillance and police recordings, there has been no determination on the retention period for e-mail communications. The volume and filing complications for e-mail communications makes meaningful retention extremely difficult for even a city the size of Burlingame. It also appears that policies on retention of e-mail vary widely from agency to agency, at all levels of government.

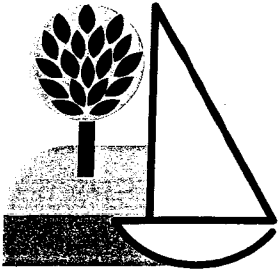
5) As required by State law, the providers of training under AB 1234 are following the curriculum developed by the California Attorney General and the Fair Political Practices Commission. Both the Brown Act and the Public Records Act are part of the approved curriculum, and the providers that have trained City officials have used up-to-date materials in providing that training. Of course, both City staff and the League of California Cities provide regular updates regarding both subjects, both as significant changes occur and as issues arise.

Sincerely,



Terry Nagel, Mayor

cc: City Council  
Planning Commission



# *City of Foster City*

## **ESTERO MUNICIPAL IMPROVEMENT DISTRICT**

610 FOSTER CITY BOULEVARD  
FOSTER CITY, CA 94404-2222  
(650) 286-3200  
FAX (650) 574-3483

September 5, 2007

Honorable John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center - 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

**RE: 2006-2007 GRAND JURY REPORT – ELECTRONIC COMMUNICATION  
AMONG CITY OFFICIALS**

Dear Judge Grandsaert:

Thank you for the opportunity to review the 2006-2007 San Mateo County Civil Grand Jury's report on Electronic Communication Among City Officials dated June 21, 2007. The City appreciates the Grand Jury's thoughtful report and understanding of the need to balance the convenience and efficiency of e-mail and other forms of electronic communication with requirements of the Brown Act and the Public Records Act.

The City of Foster City shares the Grand Jury's concerns and has already implemented several of its recommendations and continues to improve the City's current e-mail policies and practices as follows:

Recommendation #1 – Agree. The City has issued official City e-mail accounts to each Council Member.

Recommendation #2 – Agree. The City will be changing its e-mail processes to make it much easier for Council Members to receive and send e-mails through the City's network from their homes or businesses (remote access) before the end of the calendar year. When the new processes are in place, the City's current Information Technology Equipment Use Policy will be updated to require City officials to use only their City e-mail accounts when conducting City business. Current e-mail policies do not require Council Members to use their official City e-mail accounts, instead of personal e-mail accounts, when conducting City business.

Recommendation #3 – Agree. City e-mail accounts will be issued to Planning Commissioners when the new e-mail remote access process is implemented later in 2007. The revised Information Technology Equipment Use Policy

requiring use of official City e-mail accounts, instead of personal e-mail accounts, for conducting City business will be drafted to apply to Planning Commissioners. The City currently does not issue official e-mail accounts to Planning Commissioners.

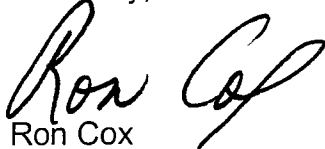
Recommendation #4 – Agree. The City has developed and adopted a Records Management Policy that includes appropriate document retention time periods. The City is developing a related policy, to be implemented in 2007, that specifically addresses how e-mail records will be maintained in accordance with the City's Records Management Policy, Information Technology Equipment Use Policy and applicable laws.

Recommendation #5 – Agree. City Council members and Planning Commissioners have been provided with information about their obligations under the Brown Act and Public Records Act during ethics training that took place pursuant to AB 1234. They will continue to refresh this information every two (2) years in accordance with the requirements of AB 1234. Additionally, the City Attorney reviews Brown Act and Public Records Act updates periodically with the City Council and Planning Commission during publicly noticed meetings. The City Attorney provides the City Council with monthly written legal updates that may include Brown Act or Public Records Act compliance issues.

Foster City's public officials and staff are committed to conducting the public's business in an open and transparent manner and to making public records, in all forms, available and accessible. Thank you for reminding us of these important obligations to the public we serve.

Please feel free to contact me if you seek additional information or have any questions regarding this response to the Grand Jury's report.

Sincerely,



Ron Cox  
Mayor

Cc: Members of the City Council  
Members of the Planning Commission  
James C. Hardy, City Manager  
Jean B. Savaree, City Attorney  
Therese Calic, City Clerk  
Richard Marks, Community Development Director  
Steve Toler, Administrative Services Director



# TOWN OF HILLSBOROUGH

1600 FLORIBUNDA AVENUE

HILLSBOROUGH

CALIFORNIA

94010-6418

September 11, 2007

Hon. John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

Re: Response to Grand Jury Recommendations

Dear Judge Grandsaert:

Please accept this letter as the Town of Hillsborough's formal response to the June 21, 2007 letter from the Superior Court relaying comments made by the current Civil Grand Jury regarding "Electronic Communications Among City Officials."

The Town has reviewed the Grand Jury's comments. We agree that the ongoing development of email communications can present challenges that may not have been anticipated when the Public Records Act and Brown Act were enacted. However, the Town's current policies and procedures, in conjunction with these "open government" statutes, have worked well for the Town. Against this background, I have the following responses:

### ***Recommendation #1***

#### **Issue official email accounts to City Council Members**

All Council members have email accounts on the Town's system. However, each Council member also may use his/her home or business account to communicate with the City Manager or with residents.

### ***Recommendation #2***

#### **Adopt email policies that require council members to use such accounts for all city or town business**

We believe that this restriction is unnecessary. Council members are well aware that the Brown Act prohibits serial meetings, which would encompass any attempt to use email to obtain consensus. Since state law is clear, a local policy is not required.



Council members may prefer to use their home or business email accounts to facilitate communications with Town residents. Residents may feel that an email in a municipal account is “owned” by the municipality and therefore subject to being read by other officials.<sup>1</sup> This may inhibit residents who wish to complain about Town personnel or other sensitive matters. On balance, the present system seems to work well for Council members and residents alike.

***Recommendation #3***

**Consider providing official email accounts to planning commissioners and applying the policies recommended in Item #2**

Because the Town has only one zoning classification (single family residential) and no business premises,<sup>2</sup> the Town does not have a planning commission, but does have an Architecture and Design Review Board. The Town encourages applicants and other interested parties to submit all materials to the Planning Department for collation into a packet for ADRB members on each project. This helps to ensure uniformity of information and allows staff to maintain an accurate record in case of legal challenges. In view of this policy, the Town discourages the use of emails and other forms of direct communication with ADRB members. For this reason, as well as for the reasons stated in response to Recommendation #2, the Town prefers to not issue municipal accounts to ADRB members.

***Recommendation #4***

**Develop and adopt appropriate record retention policies, including appropriate document retention time periods.**

The Town has appropriate record retention policies in place. In particular, the Town’s email policies provide a procedure for printing and filing emails when necessary and for regular purging of stale emails. Please see the enclosed email policy.

***Recommendation #5***

**Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials required under AB 1234**

The Town maintains a City Council Handbook that describes legal duties of Council members, including the requirements for ethics training under AB 1234. This handbook is provided to all Council members and is updated regularly to reflect changes in the law. The City Attorney also advises Council members and staff when legal or ethical requirements change. The handbook specifically addresses compliance with the Brown Act, AB 1234, and relevant sections of the Political Reform Act.

At present, all Council members have completed their training under AB 1234 and their certificates are available through the City Clerk.

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<sup>1</sup> Please see the Town’s email policies, which I enclose. These policies make clear that emails in municipal accounts are subject to access by Town personnel and that there should be no expectation of privacy when using the account.

<sup>2</sup> The Town does permit limited home-based business activities consistent with single-family residential uses.

We appreciate the work of the Grand Jury on these emerging issues and are grateful for the opportunity to inform the Grand Jury of our policies in these areas. We will continue to review existing practices relating to emails and records management.

Sincerely,

A handwritten signature in cursive script that reads "Catherine U. Mullooly".

Catherine U. Mullooly  
Mayor

Enclosure

cc: Council Members (w/encl.)  
City Manager (w/o encl.)  
City Attorney (w/o encl.)



# TOWN OF HILLSBOROUGH PERSONNEL POLICY

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POLICY NO. 211

REVISED: 7/24/01

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## **SUBJECT: Electronic Mail Policy (E-mail)**

**PURPOSE:** To establish guidelines for the use of electronic mail on the Town of Hillsborough's computer systems.

### **STATEMENTS OF POLICY:**

All electronic mail (E-mail) transmitted messages are Town of Hillsborough records and are the property of the Town.

The Town reserves the right to access and disclose all messages sent over its E-mail system(s) for any purpose.

E-mail transmissions are not confidential; therefore, employees shall have no expectation of privacy in anything that is sent over the E-mail network.

### Provisions

1. Except as noted below, all messages transmitted over the E-mail system will be Town business activities and contain information essential to its employees for the accomplishment of Town business, administration, or practices.
2. Incidental and occasional personal use of the E-mail system for essential brief personal matters that cannot be handled during non-working hours is permitted. However, these messages are subject to the access and disclosure statement set forth in the policy above. Employees are expected to keep such personal use to a minimum.
3. Users of E-mail are responsible for the management of their mailbox and associated folders.
4. Periodically, due to storage and administrative concerns, the Town will automatically purge all E-mail documents more than 30 days old.
5. Staff reports should not be sent out for final approvals via E-mail.

- 
6. All users must utilize a password and provide the Town Administrator with any personal passwords and notify Administrator of any changes when made.
  7. E-mail should not be used for network wide or broadcast purposes unless the message is of interest to all users.
  8. The Town has access to any and all electronic mail in the e-mail system and may exercise that access at any time, for any reason, including:
    - a. Investigation of actual or suspected impropriety or violation of Town policy,
    - b. Legal requirements,
    - c. Investigation of actual or suspected criminal activities,
    - d. Breach of electronic mail security,
    - e. To locate substantive information that is not more readily available by some other means, or
    - f. For the performance of routine maintenance.
  9. The Town may disclose the contents of electronic mail within or outside the Town without employee permission or knowledge.
  10. The Town has unlimited access to protect system security or the Town's property rights.
  11. Employees are required to review their E-mail in accordance with their departmental policy. The minimum review period shall be once per workweek.

#### Records Management

E-mail generates correspondence, and other records, which may be recognized as official records in need of protection/retention in accordance with the California Public Records Act and other statutes. The E-mail system is not designed for long-term storage. Therefore, E-mail, which becomes an official record, should be printed out for filing. It is the responsibility of staff to determine when an E-mail is an official record and is covered with the scope of their department's records retention schedule.

#### Confidentiality

1. Employees should understand that confidentiality is not provided within the E-mail system, as all communications transmitted are the property of the Town. (The E-mail system is not appropriate for confidential communications. It would not be appropriate for a supervisor to use E-mail to issue a written reprimand, warning, etc. It also would not be appropriate for an employee to respond back to the supervisor, should a disciplinary action occur, using E-mail.) Further inappropriate uses are any message communication of a personal nature between employees and messages advising on a personnel matter, etc.

- 
2. It is a violation of this policy for any employee, including system administrators, supervisors, or programmers to use the electronic mail and computer systems for purposes of satisfying idle curiosity about the affairs of others, with no substantial business purpose for obtaining access to the files or communications of others.

#### Etiquette

Employees should use common sense and manners when composing E-mail messages. Insulting, offensive, disrespectful, demeaning, or sexually suggestive language will not be tolerated. Harassment of any form, obscenities, any representation of obscenities or sexual, religious or ethnic slurs will not be tolerated. Sending a copy of these types of offensive E-mail to a separate party will not be tolerated. Employees may be subject to disciplinary action for violations of the Town E-mail policy.

#### Training

Training on E-mail will be provided through scheduled workshops, as access to the network becomes available. Employees will be provided an opportunity to attend a workshop, or other arrangement for training may be provided. It is the responsibility of the employee to be properly trained on the use of E-mail.

#### Typical Use

1. Appropriate uses of E-mail would be for day-to-day activity messages within the same department/division or notices where timely formal reply is not needed from the recipient. An example would be reminding employees of an upcoming training class schedule and requesting an attendance response.
2. Inappropriate uses are when information needs to be communicated individually to every City employee with an address, or if a quick response is needed. Many employees may not be able to check their electronic mail on a frequent basis. When establishing or changing a formal policy, the proper distribution remains by memo and not by e-mail.
3. The Town cannot assist employees with any private profit making activity. Therefore, private, for sale and want ads will not be allowed.
4. Messages of a political nature are prohibited. (See Town political activity policy for additional information)
5. Messages of a religious nature or the promoting or opposing of religious beliefs will not be allowed.

#### Permanence

Users should be aware that no e-mail is ever really erased until a hard drive is formatted, and potentially may be retrieved by various technical means.



## Town of Atherton

91 Ashfield Road  
Atherton, California 94027  
Phone: (650) 752-0500  
Fax: (650) 688-6528

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September 13, 2007

Hon. John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

Re: Electronic Communication Among City Officials Report  
Town of Atherton

Dear Judge Grandsaert:

This letter responds to the letter from John C. Fitton, Court Executive Officer, received June 22, 2007 regarding the Grand Jury Report entitled "Electronic Communication Among City Officials: A Valuable Tool in Need of Careful Guidance."

The Grand Jury made five recommendations in its report. This response addresses each of these as follows:

1. Issue Official E-Mail Accounts to City Councilmembers.  
The Town of Atherton has official e-mail accounts for each councilmember.
2. Adopt E-Mail Policies That Require Councilmembers to Use Such E-Mail Accounts for all City or Town Business.  
The Town's e-mail internet and on-line service use policy applies to all Town on-line accounts which include those assigned to City Councilmembers. The Town policy makes clear that on-line accounts are to be used for Town business.
3. Consider Providing Official E-Mail Accounts to Planning Commissioners and Applying Policies Adopted in Number 2 above.

The Town has not provided e-mail accounts to its Planning Commissioners. The Town of Atherton Planning Commission meets once per month. The principal business before the Planning Commission involves consideration of permits to remove heritage trees. Additional items involve conditional use permits related to accessory structures and property line setbacks. Two of the Planning Commissioners do not use e-mail at all. In

view of the fact that the Town's Planning Commission does not have any design review function as is common in many communities, it is the Town's position that concerns regarding serial meetings relative to Planning Commission actions here do not warrant provision of e-mail accounts to Planning Commissioners and/or requirements for use of these accounts as recommended by the Grand Jury.

4. Develop and Adopt Appropriate Record Retention Policies, Including Establishing Appropriate Document Retention Time Periods.

The Town of Atherton has adopted records retention policies for electronic mail. This was done in December of 2005, and requires that backup copies of e-mails be retained on the network server for at least two years. Thereafter, e-mail messages over two years old which have not been stored electronically or printed as a hard copy may be deleted. This complies with state law requirements regarding retention/destruction of public records.

5. Include Updates on Legal Development Relating to the Brown Act and the Public Records Act During the Ethics Training for Officials as Required Under AB 1234 (Ethics Training) for Local Officials.

The Town fully supports and complies with the training mandated by AB 1234 and will include updates on legal developments relating to the Brown Act and the Public Records Act during such training.

Very truly yours,

MARC G. HYNES  
City Attorney, Town of Atherton

MGH:cwb

C: Mayor and City Councilmembers, Town of Atherton  
John C. Fitton, Court Executive Officer  
[grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org)  
Michael Murphy, Chief Deputy County Counsel  
Acting City Clerk  
Interim City Manager

John C. Fitton, Chief Executive Officer  
Superior Court of San Mateo County  
400 County Center  
Redwood City, CA 94063-1655

Michael P. Murphy, Chief Deputy County Counsel  
County of San Mateo  
Hall of Justice and Records 6<sup>th</sup> Floor  
400 County Center  
Redwood City, CA 94063-1662



NOTES;

Responses to be placed on file with Clerk of the Court

Prepare original on letterhead, address and mail to Judge Grandsaert  
Judge of the Superior Court, Hall of Justice, 400 County Center,  
2<sup>nd</sup> Floor, Redwood City CA 94063-1655

Copy response and send by e-mail to: [grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org)

Insert agency name if it is not indicated at the top of your response.

Copy John C. Fitton

Court Executive Officer

Superior Court of San Mateo County

Responses to be placed with the clerk of your agency

File a copy of the response directly with the clerk of your agency. Do not send  
this copy to the court.



## CITY OF HALF MOON BAY

City Hall, 501 Main Street  
Half Moon Bay, CA 94019

September 18, 2007

Hon. John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center; 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

**Re: City of Half Moon Bay Response to the Grand Jury Report “Electronic Communication Among City Officials: A Valuable Tool in Need of Careful Guidance”**

Hon. John L. Grandsaert:

This letter is sent on behalf of the City of Half Moon Bay and is a response to the recommendations contained in the June 21, 2007, Grand Jury Report ““Electronic Communication Among City Officials: A Valuable Tool in Need of Careful Guidance.”

The City has reviewed the report and the recommendations of the Grand Jury. The City’s responses to the Grand Jury’s recommendations are as follows:

**Recommendation #1: Issue official email accounts to council members.**

The City agrees with the Grand Jury’s recommendation. The City’s council members began using city-issued email accounts in 2006.

**Recommendation #2: Adopt email policies that require council members to use such email accounts for all city business.**

The City agrees with the Grand Jury’s recommendation. As a regular course of business, the City makes council member email addresses available online and directs inquiring members of the public to use City-issued email addresses when desiring to communicate with members of the council. City staff uses council members’ city-issued email addresses when communicating with the council on issues of city business and the City Manager has advised council members not to use private email accounts for city business.

**Recommendation #3: Consider providing official email accounts to planning commissioners and requiring planning commissioners to such email accounts for all city business.**

The City agrees with the Grand Jury's recommendation. As part of its consideration of an electronic records retention policy, it is expected that the City will also consider the need to provide planning commissioners with city-issued email accounts and implementing accompanying use policies. This is expected to be completed before the end of calendar year 2007.

**Recommendation #4: Develop and adopt appropriate records retention policies, including establishing appropriate document retention time periods.**

The City agrees with the Grand Jury's recommendation. The City Clerk, in consultation with the City Attorney, is in the process of developing an electronic records retention policy for the City. It is expected that a draft policy will be brought before the City Council for consideration and approval before the end of calendar year 2007.

**Recommendation #5: Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials as required under AB 1234.**

The City agrees with the Grand Jury's recommendation. It is the City Attorney's practice to ensure that any in-house ethics training prepared by the City Attorney and provided to officials of the City is up-to-date and reflects the current state of the law with respect to the Brown Act, the Public Records Act, as well as other ethics laws. It is also the City Attorney's practice to inform and instruct the City's officials as to changes in applicable law regarding the Brown Act and the Public Records Act as such changes occur.

Sincerely,



Marcia Raines, City Manager  
City of Half Moon Bay

cc: Honorable Mayor and City Council  
Adam Lindgren, City Attorney  
Siobhan Smith, City Clerk

**CITY OF HALF MOON BAY  
OFFICE MEMORANDUM**

**TO:** City Council Members

**CC:** Debra Ryan, City Manger

**FROM:** Robin Flynn, Deputy City Clerk, and Siobhan Smith, City Clerk

**DATE:** September 18, 2007

**SUBJECT:** Voicemail, Email, and Business Cards for City Council

---

Congratulations! We have set up voicemail boxes and email addresses for each of you.

**VOICEMAIL**

To access your voicemail, simply dial your number (see attached) and when your message picks up, dial \* (star). You will then be prompted to enter your password (your phone number) and dial # (pound). From this point forward, you can follow the prompts. We have recorded a message for you that you are welcome to change if you wish. Please remember, any password changes must be reported to us. We will need access to your voicemail so we can assist you with your messages from time to time.

**EMAIL**

Attached you will find instructions for accessing your email remotely. Since this is a new venture for us as well, we have put together a brief protocol to help the transition go smoothly.

- Emails are considered public record and are subject to requests for public records;
- Staff will be checking email accounts on Tuesdays and Fridays to assure that important communications are not missed;
- Important: Any password changes must be reported to the City Clerk;
- If you would like staff to print out your emails, please let us know;
- Emails that come individually to you but are addressed to "City Council" should be forwarded (or copied) to other council members without comment.
- City email servers are spam protected and may prevent you from receiving email you expect. Let us know if you are not receiving expected email and we will work with our IT department.

We have set up a contact list of the City Hall department heads

We are very excited about council emails and feel it will be a great benefit to you. Please feel free to let us know any preferences you have (i.e. checking vm and/or email daily, etc.), or instructions you may need (i.e. setting up group lists).

**BUSINESS CARDS**

Business cards will include City Hall address and phone number, as well as your voicemail number and your City Hall email address (mock-up attached). If you prefer a number other than or in addition to City Hall, please let us know.

Mayor Barbara Pierce  
Vice Mayor Rosanne Foust

Council Members  
Alicia Aguirre  
Ian Bain  
Jim Hartnett  
Diane Howard  
Jeff Ira



City Hall  
1017 Middlefield Road  
Redwood City, CA 94063  
Voice (650) 780-7220  
Fax (650) 261-9102  
mail@redwoodcity.org  
www.redwoodcity.org

September 11, 2007

The Honorable John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice, 400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

Subject: Response to Grand Jury Report: "*Electronic Communication Among City Officials*"

Dear Judge Grandsaert:

Thank you for the opportunity to respond to the 2006-2007 Grand Jury report dated June 21, 2007, containing recommendations related to "Electronic Communication Among City Officials." I want to assure you and the Civil Grand Jury that the members of the City Council of Redwood City strictly adhere to the Brown Act and all other relevant open meeting laws and regulations aimed at providing a transparent, visible, and understandable decision-making process on behalf of our community.

Recommendation #1: *Issue official email accounts to council members.*

Response: Each City Council member has an official City email account. This has been in place for many years.

Recommendation #2: *Adopt email policies that require council members to use such email accounts for all city or town business.*

Response: The City will not implement this recommendation, believing it to be unfeasible and impractical. As elected officials, who are also involved in many other civic, social, non-profit, and advisory activities, City Council members are in frequent communication with a wide variety of individuals and organizations, very often via email. Many of these communications channels were well-established long before they were elected to office, and it is impractical to expect all of those communications to cease and be re-established via official city email accounts. Further, it is not reasonable to expect that there is any way to prevent members of the public from using a council member's previously-established or alternate email address and bringing up issues related to city business.

Recommendation #3: *Consider providing official email accounts to planning commissioners and applying the policies adopted in #2 above.*

Response: The City disagrees with this recommendation and it will not be implemented. The City's planning commissioners are volunteers, without office space or direct access to the City's email network, and ownership of a computer and Internet access is not a prerequisite for appointment to this or any City commission. Further, if this recommendation is applied to the planning commission, it would be logical to apply it to all City boards, commissions, and committees, which would be highly impractical.

September 11, 2007  
The Honorable John L. Grandsaert  
Page ~2~

*Recommendation #4: Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.*

Response: For many years, the City has a Records Management Program and Record Retention Schedule.

*Recommendation #5: Include updates on legal developments relating to the Brown Act and the Public Records Act during ethics training for officials as required under AB 1234.*

Response: The City already complies fully with the elements of AB 1234, and will incorporate the recommended updates into its required ethics training.

Again, and on behalf of the City Council, thank you for the opportunity to respond on these issues.

Sincerely,



Barbara Pierce  
Mayor

cc: Members, City Council  
Ed Everett, City Manager



OFFICE OF THE MAYOR

330 West 20th Avenue  
San Mateo, California 94403-1388  
Telephone: (650) 522-7048  
Fax: (650) 522-7041  
TDD: (650) 522-7047  
[www.cityofsanmateo.org](http://www.cityofsanmateo.org)

September 17, 2007

Hon. John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CAA 94063-1655

Dear Judge Grandsaert:

This letter is in response to your letter, dated June 21, 2007 regarding electronic communication among City officials.

***Recommendation # 1***

**Issue official email accounts to City Council Members**

The City of San Mateo has made official email accounts available to all members of the City Council since the City began using email. We have no plans to change this practice.

***Recommendation # 2***

**Adopt email policies that require council members to use such email accounts for all city or town business**

I am providing copies of the Grand Jury's report to all members of the City Council so that they are aware of your recommendation in this area.

***Recommendation # 3***

**Consider providing official email accounts to planning commissioners and applying the policies recommended in item # 2.**

To date, the City has not heard requests for the ability to send email messages to Planning Commissioners. We will research the cost of providing email accounts to the Planning Commissioners and examine whether there is interest in including the Planning Commissioners in the City email program.

***Recommendation # 4***

**Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.**

The City of San Mateo has long established record retention policies and programs for all City records and documents. We will be reviewing and updating our policies regarding electronic medium during the next fiscal year.



***Recommendation # 5***

**Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials as required under AB 1234 (Ethics Training for Local Officials).**

In compliance with AB 1234 members of the City Council and designated City Commissions and Boards have taken the AB 1234 training. In addition, although the City of San Mateo does not have a formal adopted policy specific to electronic communications for City Council, Commissions and City Committees subject to the Brown Act, these individuals receiving orientation training on the Brown Act by the City Attorney's office including training in the appropriate use of electronic communication. The City does not differentiate between Brown Act requirements for publicly provided official email accounts vs. those privately held by the individuals. The requirements apply to both.

In addition, consistent with AB1234, the City Council members and certain Boards and Commission will receive additional training on the Brown Act on an ongoing basis.

Thanks for this opportunity to share what's being done in the area of Council email accounts, records management and retention with the Civil Grand Jury.

If you have any further questions, please contact Deputy City Manager Susan Loftus at 522-7003.

Sincerely,



Jack Matthews  
Mayor

cc: City Council  
Arne Croce, City Manager  
Susan Loftus, Deputy City Manager  
Shawn Mason, City Attorney  
Norma Gomez, City Clerk



## CITY OF BRISBANE

50 Park Place  
Brisbane, California 94005-1310  
(415) 508-2100  
Fax (415) 467-4989

September 5, 2007

Honorable John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center; 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

Dear Judge Grandsaert,

Thank you for the opportunity to review the 2006-2007 San Mateo County Civil Grand Jury's report on Electronic Communication among City Officials in San Mateo County.

The City has reviewed the Grand Jury recommendations and offers the following responses:

### **Recommendation #1**

#### **Issue official email accounts to City Council Members**

The City of Brisbane has made official email accounts available to all members of the City Council since the City began using email. We plan to continue that practice.

### **Recommendation #2**

#### **Adopt email policies that require council members to use such email accounts for all city or town business**

A copy of the Grand Jury's report has been provided to all members of the City Council so that they are aware of your recommendation in this area.

### **Recommendation #3**

#### **Consider providing official email accounts to planning commissioners and applying the policies recommended in item #2**

To date, the City has not heard requests for the ability to send email messages to Planning Commissioners. We will research the cost of providing email accounts to the Planning Commissioners and examine whether there is interest in including the Planning Commissioners in the City email program.

### **Recommendation #4**

**Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.**

The City of Brisbane has adopted records retention policies and programs and is in the process of expanding these policies and programs to include all City records which include email retention.

**Recommendation #5**

**Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials as required under AB 1234 (Ethics Training for Local Officials).**

Members of the City Council, and City Boards and Commissions have taken the AB1234 training. Copies of their certificates of completion are available in the Office of the City Clerk.

Thanks for this opportunity to share what's being done in the area of Council email accounts, records management and retention with the Civil Grand Jury.

Sincerely,

A handwritten signature in black ink, appearing to read "Clayton L. Holstine". The signature is fluid and cursive, with a large initial "C" and "H".

Clayton L. Holstine  
City Manager  
City of Brisbane

September 19, 2007

Hon. John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center; 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655



Re: ELECTRONIC COMMUNICATION AMONG CITY OFFICIALS Report

Dear Judge Grandsaert:

The City Council of the City of Belmont is in receipt of your letter dated June 21, 2007 regarding the Grand Jury's June 21, 2007 Electronic Communication Among City Officials Report. The City hereby responds, as requested, to the Grand Jury's Report.

Response to Findings:

1. **Proposition 59 of 2004** - the right of the people to open meetings and public records is now in the State Constitution, (Cal. Const. Article I Section 3(b)(1)) which reads:  
"The people have the right of access to information concerning the conduct of the peoples' business; therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny".

*The respondent agrees with the finding, which accurately quotes the source cited.*

2. **The Public Records Act**  
"Public Records" 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. The public can make requests to inspect or copy public records. Failure to comply with the Public Records Act can subject a public entity to litigation.

*The respondent agrees with the finding, which accurately quotes the source cited.*

3. **The Brown Act**  
The Brown Act requires legislative bodies or local agencies to conduct the public business in a public meeting, of which proper notice has been given. A meeting is a "... congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate on any matter within its jurisdiction".

*The respondent agrees with the finding, which accurately quotes the source cited.*

4. Serial meetings are covered by the Brown Act if the purpose is to develop a concurrence as to action to be taken. A majority of members may not "develop a concurrence as to

action” on business through serial meetings, intermediaries, communication, or other subterfuge.

***The respondent agrees with the finding, which accurately quotes the source cited.***

5. Failure to comply with the Brown Act may subject a public entity to litigation and its members to criminal prosecution.

***The respondent agrees with the finding.***

6. Most cities and towns were found to have created official email accounts for elected officials but few had done so for appointed officials such as Planning Commissioners.

***Respondent cannot agree or disagree with the statement to the extent that it addresses the situation in “most cities and towns” as respondent does not have information about cities other than the City of Belmont.***

7. Several cities and towns had developed record retention policies and one, the Town of Woodside, had developed an email policy for council members.

***Respondent cannot agree or disagree with the statement to the extent that it addresses the situation of “Several cities and towns” or to the extent that it addresses the situation in “the Town of Woodside” as respondent does not have information about cities other than the City of Belmont.***

8. Most cities and towns have written policies for the use of official email accounts.

***Respondent cannot agree or disagree with the statement to the extent that it addresses the situation of “Most cities and towns” as respondent does not have information about cities other than the City of Belmont.***

9. Most cities and towns do not have up-to-date policies that address the retention and storage of electronic documents.

***Respondent cannot agree or disagree with the statement to the extent that it addresses the situation of “Most cities and towns” as respondent does not have information about cities other than the City of Belmont.***

Response to Recommendations:

1. Issue official email accounts to its council members.

***The recommendation has been implemented.***

Since approximately 2002, the City of Belmont has issued official email accounts to all City Council members.

2. Adopt email policies that require council members to use such email accounts for all city or town business.

*The recommendation has been implemented.*

In September 2002, The City of Belmont adopted an Electronic Communications Policy. Paragraph III. General Procedures, subsection B. states as follows:

**B. No Use of Personal Email.** Users shall not utilize their home or business email accounts or addresses for any communication pertaining to City business. Users should communicate with the public and staff solely via their designated City email addresses. User shall not commingle email pertaining to City business with their home or business email.

3. Consider providing official email accounts to planning commissioners and applying the policies adopted in #2 above.

*The recommendation has been implemented.*

Since approximately 2006, The City of Belmont has issued official email accounts to all City Planning Commission members, Finance Commission members and Parks and Recreation Commission members. Electronic Communications Policy Paragraph III. General Procedures, subsection B, set forth above, applies equally to members of the City's commissions.

4. Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.

*The recommendation has been implemented.*

In September 2002, The City of Belmont adopted an Electronic Communications Policy. Paragraph V. Specific Procedures, subsections A. and B. state as follows:

- A. Retention of Email.** Electronic mail may be covered by public records laws and users of email should be aware of retention issues. Email is not intended for permanent storage on the PC. Users should not hold email messages in their system for more than 60 days. After 60 days, messages are to be deleted by the user from their "Inbox" as well as their "Deleted Items" folder. All email messages are held for 30 days on tape backup by the Information Services Division but City backups of the email system are not sufficient for the various record retention requirements (see your department's copy of the City's records retention schedule). In the event information in an email message relates to a current project/policy-making decision, or otherwise needs to be retained, the message should be printed and placed in the proper hard-copy file or transferred electronically to the administrative record of an online project file.

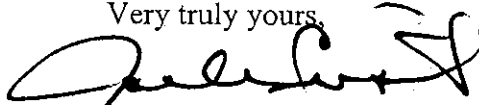
- B. **Public Records Act.** City records, whether paper or electronic, are governed by the public disclosure requirements of the Public Records Act. Disclosure may be required regardless of who sends or receives a communication or document. In the event that the City receives a request for disclosure of City records that includes email, the person responsible for the requested records must use his or her best efforts to preserve all City email covered by the request until it is determined whether the email must be disclosed. The City Clerk and/or City Attorney must be contacted concerning any request for disclosure of any City records applicable to email or other electronic records of any user subject to this policy.
5. Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials as required under AB 1234 (Ethics Training for Local Officials).

*The recommendation has been implemented.*

At AB 1234 training, updates on legal developments relating to the Brown Act and the Public Records Act are on the agenda and are discussed.

The City of Belmont thanks the Grand Jury for its time and interest in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jack Crist", written over a horizontal line.

JACK CRIST,  
Belmont City Manager

September 28, 2007

Honorable John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

Dear Judge Grandsaert,

Please accept this as the City of Millbrae's formal response to the June 21, 2007 letter from the Superior Court forwarding comments made by the Civil Grand Jury about "Electronic Communication Among City Officials."

The City has reviewed the Grand Jury comments and we offer these responses on behalf of the City Council and the City of Millbrae as the Mayor of Millbrae:

***Recommendation #1***

**Issue official email accounts to City Councilmembers**

The City of Millbrae has made official email accounts available to all members of the City Council since the City began using email accounts. We plan to continue that practice.

***Recommendation #2***

**Adopt email policies that require Councilmembers to use such email accounts for all city or town business**

I am providing copies of the Grand Jury's report to all members of the City Council in order to inform them of your recommendation in this area.

***Recommendation #3***

**Consider providing official email accounts to Planning Commissioners and applying the policies recommended in Item #2**

To date, the City has not heard requests for the ability to send email messages to Planning Commissioners. We will research the cost of providing email accounts to the Planning Commissioners and examine whether there is interest in including the Planning Commissioners in the City email program.



***Recommendation #4***

**Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.**

The City of Millbrae has long established record retention policies and programs for all City records and documents that include email retention.

***Recommendation #5***

**Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials as required under AB 1234 (Ethics Training for Local Officials).**

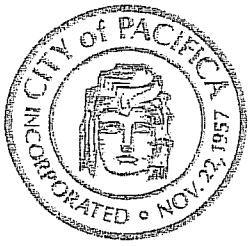
Members of the City Council, Planning Commission, Parks and Recreation Commission, and designated City staff have taken the AB1234 training. This training includes applicable updates to the Brown Act and Public Records Act. Copies of their certificates of completion are available in the Office of the City Clerk.

Thank you for this opportunity to share with the Civil Grand Jury Millbrae's policies in the areas of Council email accounts and records management and retention.

Sincerely,

Marc Hershman  
Mayor

C: City Council  
City Attorney  
City Manager



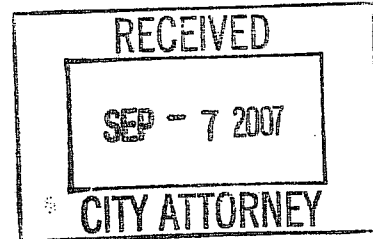
*Scenic Pacifica*

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CITY HALL • 170 Santa Maria Avenue • Pacifica, California 94044-2506

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Telephone (650) 738-7300 • Fax (650) 359-6038  
www.ci.pacifica.ca.us



September 6, 2007

Honorable John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

**Re: Response to June 21, 2007  
“Electronic Communication Among City Officials Report”**

Dear Judge Grandsaert:

This letter is the City of Pacifica’s formal response to the June 21, 2007 letter from John C. Fitton, Court Executive Officer, titled “Electronic Communication Among City Officials Report.” First, let me acknowledge the hard work of the grand jury on this important topic, and express my appreciation for their efforts. The City of Pacifica takes its obligations pursuant to the Public Records Act and Brown Act very seriously, and welcomes any opportunity for improvement in those areas.

My specific responses on behalf of the City of Pacifica are set forth below.

**Recommendation No. 1: Issue official email accounts to its Council Members.**

**Response:** The City of Pacifica is pleased to report that it has made email accounts available to the members of the City Council, and will continue doing so.

**Recommendation No. 2: Adopt email policies that require Council members to use such email accounts for all City or Town Business.**

**Response:** The City of Pacifica’s Administrative Policy No. 57 governs the use of electronic media by City employees, but does not extend to elected officials. I shall provide copies of the Grand Jury’s report to all members of the City Council so that they are aware of the recommendations on this matter.

**Recommendation No. 3: Consider providing official email accounts to Planning Commissioners and applying the policies recommended in item #2.**

**Response:** As of this writing, the City has not received requests for the ability to send email messages to the Planning Commissioners. We will examine whether there is interest in including the Planning Commissioners in the City email program.

**Recommendation No. 4: Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.**

**Response:** The City of Pacifica has a longstanding written record retention policy, which can be found in the City of Pacifica's Administrative Policy No. 8.

**Recommendation No. 5: Include updates on legal developments relating to the Brown Act and Public Records Act during the ethics training for officials as required under AB 1234 (Ethics Training for Local Officials).**

**Response:** Members of the Pacifica City Council, designated Commissions and City Staff have taken the AB 1234 training. Copies of their certificates of completion are available in the Office of the City Clerk.

Again, thank you for this opportunity to address the recommendations of the Grand Jury with respect to Electronic Communication Among City Officials.

Sincerely,



Stephen A. Rhodes  
City Manager

Cc: City Council  
City Attorney ✓



**CITY OF EAST PALO ALTO  
OFFICE OF THE CITY MANAGER**

October 18, 2007

Hon. John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

**Re: East Palo Alto's response to 2006-2007 Civil Grand Jury Report**


Dear Judge Grandsaert:

Attached is East Palo Alto's response to the 2006-2007 Civil Grand Jury Report, in the following format:

- October 16, 2007 administrative report to the East Palo Alto City Council, containing the Grand Jury reports and the City's proposed responses to each report.

Please be advised that on October 16, 2007, the City Council reviewed and approved the responses to the reports. An electronic version of the City's responses is being sent directly to the Grand Jury at [grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org).

Very truly yours,

  
Alvin D. James, City Manager

Attachment: as indicated

cc: City Council  
City Attorney



**CITY OF EAST PALO ALTO  
OFFICE OF THE CITY MANAGER**

**Administrative Report**

Date: October 16, 2007  
To: Honorable Mayor and Members of the City Council  
From: Alvin D. James, City Manager *ADJ*  
Re: 2006-2007 Civil Grand Jury Report: Proposed Responses from East Palo Alto

---

**Recommendation:**

Review and accept the proposed responses to the 2006-2007 San Mateo County Civil Grand Jury Report

The 2006-2007 San Mateo County Civil Grand Jury issued three reports related to East Palo Alto:

1. Electronic Communication Among City Officials: A valuable Tool in Need of Careful Guidance
2. Emergency Planning for Dam or Levee Failures in San Mateo County
3. Building in East Palo Alto: Is the Building Permit Approval Process in East Palo Alto Equitable?

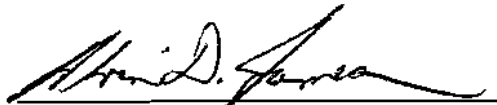
The City is required to respond to the reports. The City Council is required to review and approve the proposed responses.

Attached are the three reports (**EXHIBITS 1-3**). The proposed responses to electronic communications and dams/levees are contained in separate documents (**EXHIBITS 4 and 5**). The proposed response to building in East Palo Alto is more complicated, and the proposed response is interspersed in the report for ease of reference (**EXHIBIT 6**).

**Fiscal Impact:**

None.

Respectfully submitted,



Alvin D. James, City Manager

EXHIBIT 1. Electronic Communication Among City Officials: A valuable Tool in  
Need of Careful Guidance

EXHIBIT 2. Emergency Planning for Dam or Levee Failures in San Mateo County

EXHIBIT 3. Building in East Palo Alto: Is the Building Permit Approval Process in  
East Palo Alto Equitable?

EXHIBIT 4. Proposed response to Electronic Communication Among City Officials.

EXHIBIT 5. Proposed response to Emergency Planning Dam or Levee Failures in  
San Mateo County

EXHIBIT 6. Proposed response to Building in East Palo Alto

**AGENDA ITEM**  
**CITY COUNCIL/REDEVELOPMENT AGENCY**  
**TUESDAY, OCTOBER 16, 2007    ITEM No. VIII.A. 1**

**POLICY AND ACTION**

**ITEM: VIII.A.1**

**2006-2007 CIVIL GRAND JURY REPORT: PROPOSED  
RESPONSES FROM EAST PALO ALTO**

## **EXHIBIT 1**

# **Electronic Communication Among City Officials: A valuable Tool in Need of Careful Guidance**





## **Electronic Communication Among City Officials: A Valuable Tool In Need of Careful Guidance**

### **Issue**

**To what extent do the cities in San Mateo County facilitate, yet moderate, electronic communication among elected and appointed officials without violating the Brown Act or the Public Records Act?**

### **Background**

The Brown Act is California's open public meeting law. It was enacted in 1953 as necessary government reform to limit perceived and sometimes real "backroom" deal-making and to make local government decision-making more transparent to the public. The basic provision of the code is: "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter." Government Code Section 54953(a)

To an ever-increasing degree, city governments in San Mateo County have found the use of electronic communication (e-mail and attachment documents) to greatly facilitate the dissemination of information. It is much faster and cheaper to move and store large amounts of information electronically. With such ease, however, come pitfalls such as creating duplicate files subject to public disclosure under the Public Records Act and the ease with which an appearance of an illegal serial meeting can be created via email communication between officials.

## **Investigation**

The 2006-2007 San Mateo County Civil Grand Jury (Grand Jury) conducted an investigation to determine the degree to which San Mateo County cities have:

- assigned specific email accounts to elected and appointed officials
- adopted policies for the use of those accounts
- adopted records retention policies to control document proliferation and establish accountability

The Grand Jury conducted selected interviews and requested information from all cities in San Mateo County and received varied responses, many of which indicated considerable effort to be proactive in these areas, particularly the Town of Woodside. It should be noted that the bulk of responses were via email with attachments.

## **Findings**

**Proposition 59 of 2004**— the right of the people to open meetings and public records is now in the State Constitution, (Cal. Const. Article I Section 3(b)(1)) which reads:

**“The people have the right of access to information concerning the conduct of the peoples’ business; therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”**

### **The Public Records Act**

**“Public Records” 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. The public can make requests to inspect or copy public records. Failure to comply with the Public Records Act can subject a public entity to litigation.**

### **The Brown Act**

**The Brown Act requires legislative bodies or local agencies to conduct the public business in a public meeting, of which proper notice has been given. A meeting is a “...congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate on any matter within its jurisdiction”.**

**Serial meetings are covered by the Brown Act if the purpose is to develop a concurrence as to action to be taken. A majority of members may not “develop a concurrence as to action” on business through serial meetings, intermediaries, communication, or other subterfuge.**

**Failure to comply with the Brown Act may subject a public entity to litigation and its members to criminal prosecution.**

**Most cities and towns were found to have created official email accounts for elected officials but few had done so for appointed officials such as Planning Commissioners.**

Several cities and towns had developed record retention policies and one, the Town of Woodside, had developed an email policy for council members.

Most cities and towns have written policies for the use of official email accounts.

Most cities and towns do not have up-to-date policies that address the retention and storage of electronic documents.

## Conclusions

All California cities face a complicated set of issues when attempting to balance the benefits of electronic communication and storage against the pitfalls of Brown Act constraints and Public Records Act obligations.

In the case of Brown Act violations, officials who engage in prohibited serial meetings face the possibility of criminal prosecution or other damaging consequences. The point at which a serial meeting becomes illegal, however, is not clear and as case law evolves ongoing legal guidance should be sought.

The California Public Records Act mandates citizen access to records including all communications related to public business "regardless of physical form or characteristics, including any writing, picture, sound, or symbol, whether paper, magnetic or other media". Government Code Section 6252(e)

The Public Records Act, while praiseworthy in its goals, can constitute a significant burden on staff time (the cost of which is not recoverable), document duplication cost (partially recoverable), and legal costs (not recoverable) to determine which information is public record and whether any Public Record Act exemptions apply. Additionally, litigation discovery trends specifically address the production of electronic documents, including the specific formats in which such document must be produced. This burden is, or should be, a strong motivation for enacting record retention policies that address redundancy issues and establish legally required document retention time periods.

Responding to a Public Records Request usually includes the production of email sent or received relating to the requested subject matter. Consequently, council members or their legal representatives must review their email files to sort out personal communication versus public communication. If the Council member uses his or her personal email account for city matters, such searching is more time consuming and potentially intrusive. While the issuance of official email addresses for City Council members is a rapidly increasing practice, policies for using such accounts are not as common.

Planning commissioners are subject to the Brown Act, and their deliberations could be a problem if care is not taken.

The financial downside to cities faced with burdensome requests and aggressive litigation is substantial and merits focused, proactive attention. Most San Mateo County cities are, generally speaking, moving in the right direction by adopting separate email accounts for elected officials and by developing and adopting electronic records retention policies. Interpretation of the Brown Act is subject to change due to evolving case law, making it difficult to recommend a one-size-fits-all solution for all cities. Each city should monitor legal developments concerning the Brown Act.

Advances in communication using electronic media such as email have made communication among elected officials convenient and efficient. Certain forms of such communication, however, can be considered a prohibited serial meeting (as opposed to an allowable serial meeting) and thus violate the Brown Act. It is important for elected officials to understand the potential pitfalls as well as the benefits of email communication.

## **Recommendations**

The Grand Jury recommends that the Council of every City or Town in San Mateo County:

- 1) Issue official email accounts to its council members.
- 2) Adopt email policies that require council members to use such email accounts for all city or town business.
- 3) Consider providing official email accounts to planning commissioners and applying the policies adopted in #2 above.
- 4) Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.
- 5) Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials as required under AB 1234 (Ethics Training for Local Officials).

## **EXHIBIT 4**

### **Proposed response to Electronic Communication Among City Officials**

1. Electronic Communication Among City Officials: A Valuable Tool in Need of Careful Guidance

Response to Findings:

- a. Respondent East Palo Alto agrees with the findings.

Response to Recommendations:

- a. The recommendation to issue official email accounts to all council members requires further analysis, which will be undertaken by December 31, 2007;
- b. The recommendation to adopt email policies requiring council members to use official accounts for all City business requires further analysis, which will be undertaken by December 31, 2007.
- c. The recommendation to consider issuing official email accounts to planning commissioners, with the requirement that such accounts be used for all City business, will be undertaken as part of the City's analysis for council member accounts.
- d. The recommendation to develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods, requires further analysis, which will be undertaken by December 31, 2007.
- e. Updating council members, planning commissioners and other decision-makers and staff on legal developments relating to the Brown Act and the Public Records Act as part of the training for officials, as required under AB 1234 (Ethics Training for Local Officials), has already been implemented and was completed prior to January 1, 2007, and will continue every two years.

November 27, 2007

Honorable John L. Gradsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City CA 94063-1655

**Subject: Response to 2006-2007 Grand Jury Report**

Dear Judge Gradsaert:

As requested, the City of Daly City is responding to the Superior Court's communication transmitting the 2006-2007 Grand Jury Report, "Electronic Communication Among City Officials."

The following provides the City's response to the five specific recommendations contained in the report:

**1. Issue official email accounts to its City Council Members**

Response: Respondent agrees with the finding. The recommendation has been implemented and Council Members who wish to use email are issued official email accounts.

**2. Adopt email policies that require Council Members to use such email accounts for all City or Town business.**

Response: This recommendation will not be implemented because it is considered impractical. City Council Members were engaged in a host of activities prior to becoming elected officials. They have a need, and are entitled, to communicate freely with friends, neighbors, business acquaintances and other community groups with whom they have been aligned. Email is commonly used for such communication. The need for and right to private communications should not be forfeited upon being elected to office. Short of cancelling all personal email accounts for elected officials, it is not possible to prevent individuals from contacting Council Members via email and discussing city business.

Implementing such a policy would also require defining the types of content that constitute city business. Elected Officials routinely communicate with constituents and advisors on political matters. Clearly Council Members have an expectation that their right to privacy allows for such political strategizing to be undertaken in the absence of official scrutiny. The most impractical aspect of this recommendation is defining what is City business versus what is political and developing an enforceable policy that can be monitored.

Honorable John L. Gradsaert  
Subject: Response to 2006-2007 Grand Jury Report  
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**3. Consider providing official email accounts to Planning Commissioners and applying the policies adopted in #2 above.**

Response: The recommendation will not be implemented because it is considered impractical. The City's Planning Commissioners are unpaid political appointees. The City does not have the facilities to provide office space with computer access, and it is not reasonable to assume that every commissioner that is appointed has access to a computer and internet service. The City does maintain public records of all written communications to or from the City, City Council and the Planning Commission, including emails.

**4. Develop and adopt appropriate record retention policies, including establishing appropriate document retention schedules.**

Response: The recommendation has been implemented. The City has had such policies in place for a number of years.

**5. Include updates on legal developments related to the Brown Act and the Public Records Act during training for officials as required under AB 1234 (Ethnic Training for Local Officials).**

Response: Respondent agrees with the finding and the recommendation has been implemented.

Thank you for the opportunity to respond to the 2006-2007 Grand Jury Report. If you have any questions regarding the responses offered, please contact me at (650) 991-8127.

Very truly yours,

Patricia E. Martel  
City Manager

PEM/rp