RULES COMMITTEE: 10-07-09
ITEM: H.2

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: RULES AND OPEN GOVERNMENT COMMITTEE

FROM: Tom Manheim

SUBJECT: NEW TECHNOLOGIES

DATE: 10-01-09

Approved Deanna Santana Date 10/2/09

RECOMMENDATION

Approve a work plan for studying how and whether communications about City business that employ new technologies and/or non-City-owned equipment should be subject to disclosure requirements.

BACKGROUND

On August 18, 2009, the City Council referred to the Rules and Open Government Committee (ROGC), "...the question of how communications about city business made with personal email, text messages, cell phones, social networking websites and other new technology should be dealt with as public records." On September 9, 2009, the ROGC discussed new technologies, and identified a number of issues related to the retention and disclosure of communications using new technologies and/or equipment that is not owned by the City and directed staff to return with a "broad framework of issues to discuss."

ANALYSIS

The ROGC discussion focused on two general topics:

- Should communications sent or received and read during a Council meeting regarding a matter on the agenda be permitted, and if so, what disclosure requirements should be imposed?

- How should the City treat communications regarding City business when they are sent or received and read on non-City-owned equipment?

After some discussion, the Committee directed staff to return with an outline of the issues involved and a plan for study of these issues. In reviewing the ROGC's September discussion,

staff has identified a number of issues, the analysis of which should provide a framework for the ROGC's consideration of any policy in this area. These fall into two areas: 1) communications during Council meetings; and, 2) communications on non-City-owned equipment. :

Communications during Council meetings

- If the City adopts a policy that communications regarding City business that occurs during a Council meeting should be disclosed, to whom should the disclosure obligation apply?
- Should the requirement apply to communications between elected officials and their own staff?
- Should the requirement apply to communications between elected officials and City staff?

Communications on non-City-owned equipment

- Can the City impose a requirement to disclose communications on privately owned devices?
- If so, what would be the mechanism for enforcement?
- To whom should a policy requiring disclosure of communications about City business on non-City-owned equipment apply?
- What, if any, are the technical issues barriers or challenges to implementing such a policy?
- What resources, knowledge and skills would be required to implement such a policy?
- Are there any implications for retention of these communications?

CONCLUSION

The use of new technologies and personal equipment for communications about City business in the context of the California Public Records Act will require some legal and technical research. If the ROGC approves the work plan outlined above, staff will conduct the research and provide recommendations. This research and its presentation in a staff report with recommendations would likely not be complete until the middle of November.

Tom Manheim
Director of Communications.

For questions please contact Tom Norris at (408) 535-8120.