

**RESOLUTION NO. 2012-21**

**EMAIL RETENTION RESOLUTION**

**A POLICY ESTABLISHING GUIDELINES  
FOR EMAIL RETENTION AND PRESERVATION.**

**WHEREAS**, the Town has determined that email is a valuable and efficient means of conducting official Town business; and

**WHEREAS**, the New Mexico Inspection of Public Records Act (“IPRA”) permits inspection of certain public records created by government employees and officials; and

**WHEREAS**, certain email correspondences pertaining to Town business may be subject to inspection as public records under IPRA; and

**WHEREAS**, the Town has determined that certain guidelines governing the use of email in the conduct of official Town business must be adopted to ensure compliance with Town personnel policies and the requirements of IPRA; and

**WHEREAS**, the Town Council wishes to set forth the conditions governing use of email by Town employees.

**NOW, THEREFORE, BE IT RESOLVED** by the Town of Edgewood Council that the following policy is hereby adopted and shall constitute the guidelines to be followed by all Town officials and employees when using email to conducting official Town Business.

**1.0 Purpose**

The purpose of this policy is to provide guidelines for email retention and preserving emailed records.

**2.0 Scope**

This Policy applies to all persons who have been assigned an email account on the Town email system.

**3.0 Responsibilities**

All email messages and computer passwords generated or applicable to an email account on the Town email system are the property of the Town. However, email messages are under the direct control of each account holder. As a result, all persons owning or using an e-mail account assigned by the Town of Edgewood are responsible and accountable for reading, understanding, and complying with this Email Retention Policy at least annually. The Town Clerk is responsible for the update and enforcement of this policy.

## 4.0 Policy

All books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by the Town, or any employee or official of the Town, in pursuance of law or in connection with the transaction of public business are subject to the terms of the New Mexico Inspection of Public Records Act. All email messages sent or received using government equipment, software, or accounts, or which pertain to a government purpose, are public records subject to the Town's record retention requirements. This includes all emails regardless of the device or system used to generate the messages (i.e. Outlook, Blackberry, pst files). Public access instant messaging (i.e. Yahoo, MSN, Google Chat, etc.), and mobile to mobile instant messaging (i.e. Blackberry, iPhone, Android, etc.) are not to be used for business purposes. All Town business must be conducted using equipment, software, and accounts.

4.1 Records Created with Email: Electronic mail systems transmit a wide variety of information. The length of time that an email is retained varies based on the content of the message. Email messages fall within two broad categories: (1) Retainable Records, and (2) Non-Records. Retainable Records must be retained in accordance with the requirements of the applicable records retention schedule adopted by the New Mexico Commission of Public Records – State Records Center and Archives for similar documents. The content of the email message determines whether the message needs to be retained and the retention period. Non-Records are not subject to the requirements of any records retention schedules.

4.1.1 Retainable Records may include anything that contains information that has been created or is received in the course of business that can be used to provide information about the informational, communicative, or decision making process of government. All persons must ensure that e-mail messages that provide evidence of official Town business are appropriately stored, filed and disposed of according to this policy and any applicable records retention and disposition schedule.

4.1.2 Non-Records include email messages that do not meet the criteria for classification as a Retainable Record. Non-Records should be promptly discarded unless the message becomes part of some official record as a result of the unique circumstances surrounding the message. E-mails classified as Non-records, including transitory and duplicate messages, should be deleted by the employee on a regular basis.

### 4.2 Defining Non-Records and Retainable Records

4.2.1 Non-Records include transitory messages, personal correspondence, promotional material, duplicate copies of messages, copies of documents distributed for reference purposes only, announcements for non-official business such as social events, junk mail, and messages to email distribution lists, including listservs, which are not directly related to Town business. Non-Records should be deleted by the employee on a regular basis.

4.2.1.A Transitory email messages include those communications which have

very limited administrative value, including messages notifying employees of an upcoming meeting. In such instances, the message would only have value until the meeting has been attended or the employee receiving the message has marked the date and time in his or her calendar. Transitory messages do not include any documents that set policy, establish guidelines or procedures, certify a transaction, or become a receipt. Transitory documents serve only to convey information of temporary importance.

4.2.1.B Personal correspondence may include any email message not received or created in the course of Town business, and may be deleted immediately as these messages are not official records. Examples include lunch invitations to co-workers. Personal correspondences are strongly discouraged and should be kept to a minimum. Personal correspondence are subject to the same restrictions imposed on personal telephone and facsimile use. All email messages may be accessed and/or monitored during the normal course of business. Personal information should therefore never be sent using a Town email account unless the sender understands that the email may be intercepted and reviewed.

4.2.1.C Promotional material includes any publicly available item received from vendors and similar entities, or copied or downloaded from Internet sites. Promotional materials are not official records unless specifically incorporated into other official records. Spam mail is considered promotional material and may be deleted at any time. These items are treated in the same manner as hard copy promotional flyers.

4.2.1.D Duplicate copies include any message which includes an exact copy of a pre-existing record. Email message strings frequently contain duplicate copies of prior messages exchanged among parties. In the event of a duplicate message, only the original message needs to be retained. In the event both the sender and the recipient are subject to this policy, the original record to be retained should be that from the sender.

4.2.2 Retainable Records include all records created or pertaining to any governmental purpose, and must be retained in accordance with the relevant records retention schedule, which may be either for a set period of time or permanently. Retainable records include but are not limited to all of the following:

- Correspondence regarding management, financial, operating procedures or policy matters;
- Messages regarding Town policy;
- Messages containing minutes of meetings, or transcripts of hearings;
- Messages regarding vital public information such as environmental reports,

activity reports, audit trail reports, project work plans, status reports, recovery records, expense accounting records, requests for proposals, or case management files;

- Messages that are relied upon in the development of management, financial, operating procedures or policy; and
- Final reports or recommendations.

4.3 Examples of email message categories subject to a records retention schedule include, **BUT ARE NOT LIMITED TO**, the following:

- Messages containing information developed in preparing position papers, reports, and studies;
- Messages reflecting official actions taken in the course of conducting Town business;
- Messages conveying information on Town programs, policy decisions, and essential transactions;
- Messages conveying statements of policy or the rationale of official decisions or activities;
- Messages documenting oral exchanges, such as meetings or telephone conversations, during which policy was discussed or formulated;
- Email calendars reflecting the daily appointments of officials conducting Town business; and
- Distribution lists for Town business mail.

## **5.0 Procedures for Managing Retained Emails**

- 5.1 All email messages relating to Town business should be completed using the Town issued email account. Emails regarding or pertaining to Town business should not be sent, copied, or forwarded to an employee's personal or external email account.
- 5.2 The content of the email determines the applicable retention period. Record retention schedules for each type of record series are issued by the New Mexico Commission of Public Records – State Records Center and Archives. Records retention schedules are currently found at 1.19.8 NMAC.
- 5.3 Each employee is exclusively responsible for managing all email messages sent and received from his or her account. Each employee must sort, file, retrieve, and retain or delete their email in accordance with the requirements of the applicable records retention schedule adopted by the New Mexico Commission of Public Records – State Records Center and Archives, or as required by any other authority (e.g. lawsuits or local ordinance), whichever is longer.
- 5.3.1 Sorting: Sorting involves promptly deleting messages which have been retained longer than the applicable record retention schedule, or which do not need to be retained as set forth in this policy. Sorting also involves routinely filing email that

must be retained for the applicable retention period. To avoid wasting computer storage space, email should be deleted promptly if it is not a record and it has no further value. Employees must properly sort all email within thirty (30) days of receipt, as older emails may be permanently deleted by the IT Department (“ITD”) as part of its regular maintenance.

5.3.2 Filing: Filing email messages may be completed either electronically or through paper storage. Acceptable outside email storage includes printing and filing hard copies of emails in a paper file, or storing the email on a separate drive. Retainable Records must be maintained in accordance with the applicable record retention schedule, and records must be converted to a compatible format in the event the media used to access electronic files is changed. All records which must be retained permanently should be both printed and stored in a separate drive.

5.3.3 Retrieving: Upon receipt of a public records request, the Town Clerk will work with the ITD and the employee to retrieve all applicable email messages either on the email system or stored on separate drives. Records requests may also be sent directly to those employee(s) who created or received the records. All records requests must be promptly responded to by the employee, including retrieving email messages stored in either electronically or in a paper file, if necessary. Although all email messages are the property of the Town, the employee is exclusively responsible for the requested email and must find and retrieve it in a timely manner just as he or she must be able to quickly retrieve and produce any documents in his or her possession or control.

5.3.4 Retaining and deleting: Retaining and deleting filed emails must be done according to the New Mexico Record Retention Schedule. Retaining involves the storage of a record, including preserving information available through any original link(s) and/or attachment(s) included in the email.

#### 5.4 Managing email messages when an employee leaves the Town.

5.4.1 Each employee is responsible for organizing and filing email messages before leaving his or her position.

5.4.2 Supervisors are responsible for ensuring that their staff completes the final organization of email before leaving, or for organizing and filing the email messages in the employee’s account if their employment is abruptly terminated. Supervisors are also responsible for managing, filing, and retrieving email messages of their former staff.

5.5 In the event a record is part of or subject to a lawsuit, the Town and all of its employees are required preserve those records, even if it has been retained past the time required pursuant to the record retention schedule. Such records are subject to a litigation hold by the Town Clerk’s Office or Legal Counsel. The Town’s legal counsel will be responsible for ensuring all litigation holds are complied with by Town employees and officials.

5.6 Exceptions to the Public Records Requirements and Confidentiality. Except as

otherwise defined in this policy, every email written or received while fulfilling the duties of a public employee is considered a public record. This means that to the extent permitted by state law and the New Mexico Inspection of Public Records Act, the public has a right to inspect and copy every email that a public employee writes or receives in the official capacity of the employee's duties unless the email falls under a recognized exception to public disclosure, such as emails that are subject to the attorney-client privilege. Emails which are not subject to disclosure must be maintained as confidential.

To ensure that confidential or privileged information is properly protected, employees should take the following precautions to ensure confidentiality;

- 5.6.1 Clearly label the email as confidential or privileged and warn the recipient not to forward the email to any person who is not authorized to receive it. Labeling the subject line of the email as confidential or privileged assists the Town Clerk's Office and the ITD when releasing records. Records that do not meet the criteria to be classified as confidential or privileged must be disclosed pursuant to a request to inspect public records regardless of whether it has been labeled as confidential or privileged.
- 5.6.2 In the email, identify the claimed exception(s) to disclosure, including the statutory or other citation which supports the claim of confidentiality.
- 5.6.3 Employees should also consider whether a more secure form of communication is available or appropriate for all future messages, including whether the matter should be discussed by email given the confidential or privileged nature of the topic. All email messages may be accessed and/or monitored during the normal course of business, including confidential and privileged messages. Extreme caution should be used in when sending confidential or privileged information to ensure it is not intercepted.

## **6.0 Rules Governing Email Usage**

- 6.1 Employees may not encrypt any emails without obtaining written permission from their supervisor. If approved, the encryption key(s) must be made known to the Town Clerk and/or the Mayor.
- 6.2 The Town will provide employees with periodic Anti-Virus updates for assigned computers. It is the employee's responsibility to update his or her assigned computer when notified. Employees shall not willfully and knowingly open email messages that look questionable nor shall they open attachments unless the user is certain that the attachment is from a known sender, is expected, and is pertinent to the employee's job. Questionable E-mails and attachments are to be deleted immediately.
- 6.3 Employees shall not have an expectation of privacy in the e-mail system, specific files, or any documents created or received by them. By using the Town e-mail system, employees acknowledge that all content therein is owned by the Town and may be accessed and/or inspected by the Town, the employee's supervisor, Town Clerk, and/or Mayor at any time.

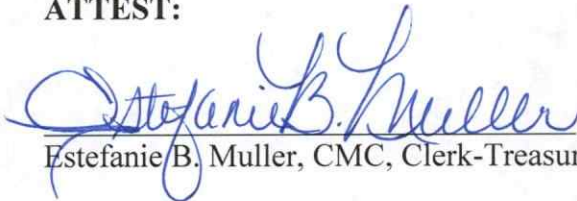
- 6.4 Employees shall not use email resources and services for commercial purposes, including but not limited to, on-line trading and e-bay operations.
- 6.5 Employees shall not send or forward emails containing libelous, defamatory, offensive, racist or obscene remarks. If an employee receives an email of this nature, they must promptly notify their supervisor.
- 6.6 Employees shall not use email to conduct prohibited political activities or business activities related to the holding of public office.
- 6.7 Personal email shall not impede the conduct of Town business. Employees shall not subscribe to mailing lists or mail services that fall outside of the employee's scope of work.
- 6.8 Serious disciplinary action up to and including termination of employment may result from evidence of prohibited activity obtained through monitoring or inspection of electronic messages, files, or electronic storage devices. Illegal activity involving state IT resource usage may be referred to appropriate authorities for prosecution.

**PASSED, APPROVED and ADOPTED THIS 17<sup>th</sup> day of OCTOBER, 2012.**



Brad E. Hill, Mayor

**ATTEST:**



Estefanie B. Muller, CMC, Clerk-Treasurer