Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: January 19, 2016

TO: Honorable Mayor and City Councilmembers

FROM: City Attorney

SUBJECT: Californians Aware Proposal Presented at the Rules Committee Meeting of January 13, 2016

This Office has prepared the attached draft ordinance at the request of the Rules Committee (Committee) on January 13, 2016.

In response to questions from Committee members, this Office has concluded that the City of San Diego must first comply with meet and confer requirements of state labor laws before adopting an ordinance pertaining to represented employees' private e-mails or private devices. This meet and confer obligation would extend to an ordinance adopting the change in local law or even placing the matter on the ballot for voters to approve as a City Council-initiated proposition.

However, no such meet and confer requirement exists for unrepresented employees. This would include all elected officials and their staffs, including the City Attorney and unrepresented management at the City Attorney's Office. Accordingly, the City Council could adopt such an ordinance now covering unrepresented employees and implement it, while meeting with labor organizations regarding extension of the ordinance to cover represented employees. Even if it is not extended, the ordinance adopted at this point would cover policy makers and their staffs, as well as the Mayor and his or her staff and the City Attorney and his or her unrepresented staff.

Enclosed is the ordinance covering unrepresented employees. This could be placed before the full City Council without delay. In response to committee questions, we see no legal impediment to this moving forward to City Council for adoption in February as an ordinance and reinforcement as a voter-approved proposition in June to ensure that it cannot be amended

or rescinded in the future without voter approval. The only limitation is the need to meet and confer as to union employees which can be addressed as discussed above.

JAN I. GOLDSMITH, CITY ATTORNEY

By _____
William Gersten
Deputy City Attorney

JIG:ccm:hm
Attachments
cc: Donna Frye, Californians Aware
Steven Hadley, Committee Consultant
MS-2016-2
Doc. No.: 1205890

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 48 AND SECTION 22.4801, RELATING TO THE PUBLIC DISCLOSURE OF DOCUMENTS, COMMUNICATIONS, AND OTHER WRITINGS.

WHEREAS, public disclosure of City records is in the public interest; and

WHEREAS, to further transparency and public disclosure of City records, all documents, communications and other writings created or received in the course of conducting City business by appointed or elected City officers or unrepresented City employees, regardless of medium, are classified as City records for purposes of disclosure; and

WHEREAS, NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 2 of the San Diego Municipal Code is amended by adding Division 48 and section 22.4801 as follows:

Article 2: Administrative Code

Division 48: Public Records

§22.4801 Public Disclosures of Documents, Communications, and Other Writings

All documents, communications, and other writings, including emails and text messages, recorded in whatever medium, created or received in the course of conducting any City business by its appointed or elected officers, unrepresented employees, departments, bodies or agents, are deemed to be used and controlled by the City for purposes of public disclosure. In addition, all such records shall be presumed open to the public unless such access is prohibited by state or federal

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law or by an ordinance, regulation, or policy of the City Council or other City authority that is consistent with San Diego City Charter section 216.1. These and other City records shall be retained for a minimum of two years.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
Jan I. Goldsmith
Deputy City Attorney

JIG:ccm
January 15, 2016
Or.Dept: City Council
Doc. No.: 1205842

DRAFT

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By_____
Deputy City Clerk

Approved: _____ _____
(date) KEVIN L. FAULCONER, Mayor

Vetoed: _____ _____
(date) KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Underline

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JIG:ccm
January 15, 2016
Or.Dept: City Council
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