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MEMORANDUM

TO: Honorable Jack Webb, Council President

FROM: Steven E. Rohan, Deputy General Counsel
Legislative Affairs Department 

RE: **Automatic Dissemination of Council Member E-Mails**

DATE: June 13, 2011

As you are aware, a number of Council Members have utilized existing technology to automatically “mirror” their City of Jacksonville email messages through electronic public portals. The Mayor’s Office offers public viewing of their email – except that all of their incoming email is screened before it is sent to the portal.

A recent technology glitch shut down the City Council’s portal. This provided the Office of General Counsel with an opportunity to address the legal ramifications of unscreened email message disclosure. I mentioned our concerns during the ethics seminar on June 2, 2011.

While most of the email messages received by Council Members are in fact disclosable public records, the Council must be reminded that many of the messages received, and certain contents thereof, either should not be disclosed to the public, or can not be disclosed to the public. There are three important types of confidential communications that are of great concern:

1. Communications that may be subject to public records demands, but are intended to be maintained confidentially until an appropriate time for disclosure. These communications may include such things as employee, constituent, legislative and policy relations.
2. Communications with messages that are exempt from public disclosure and are intended by law to be kept confidential, such as legal strategy and collective bargaining communications.

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3. Communications with information that are by law decreed "confidential" and prohibited from being disclosed, such as medical information, social security numbers, and certain home addresses.

Additionally, the Florida Supreme Court has also ruled that "personal" non-business related documents are not public records and need not be disclosed to the public.

The Office of General Counsel believes that the automatic mirroring and posting of Council Member email communications has a high degree of risk for the inappropriate disclosure of confidential information. This disclosure not only places the interests of the Council and the City of Jacksonville government at risk, but also exposes the City to liability for the disclosure of information that is prohibited by law from being disclosed to the public.

For the foregoing reasons, the Office of General Counsel recommends that the policy of automatic mirroring and posting of Council Member email communications be, at a minimum, modified to develop and provide for an alternative disclosure plan that might involve ECA screening of incoming and outgoing email. Such action would not violate Florida's public records law as such law does not mandate automatic posting of communications under any circumstance. Rather, it would afford the Council the opportunity to integrate new technology in a manner that is more in keeping with the spirit of the disclosure and confidentiality provisions of the public records laws.

If you have any questions or would like to confer with me regarding the subject, please do not hesitate to contact me.

C: Cindy A. Laquidara, General Counsel
Cheryl Brown, Council Secretary / Director ✓
Margaret M. Sidman, Chief of Council Legislative Affairs