City of Long Beach
Working Together to Serve

Office of Gerrie Schipske
Councilwoman, Fifth District
Memorandum

Date: May 12, 2009

To: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

From   Councilwoman Gerrie Schipske, Fifth District

Subject: **AGENDA ITEM:** *Request the City Attorney to provide guidance concerning the appropriate policies and procedures for retention of electronic documents, including but not limited to e-mails, by elected and appointed officials (i.e. Harbor, Water, Planning, Parks, Recreation and Marine, and Civil Service commissioners) and city employees in order to comply with the Brown Act, the California Public Records Act and State and Federal rules of evidence.*

Background:
It was recently disclosed in a City Council meeting that e-mails are not being regularly stored in a central location (i.e. City computer server) but instead stored on individual computer "desktops" and deleted at the discretion of the person receiving or generating the e-mails.

The Brown Act: The Brown Act is contained in section 54950 et seq. of the Government Code. The Brown Act is California's law guiding local public meetings. Multi-member legislative bodies of cities, counties, and special district must open their meetings to the public. This allows the citizen to know about the actions taken by local public officials. The Brown Act ensures the public's right to observe and comment upon decisions, which affect home, business, organization, and community.

The California Public Records Act: In enacting the California Public Records Act, the Legislature stated that "access to information concerning the conduct of the public's business is a fundamental and necessary right for every person in the State. (Government Code 6250 et. seq) provides access to public records by the public and includes in the definition of public records:

    (g) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

The California State Records, Department of General Services published an "Electronic Records Management Handbook" for state agencies which beginning at page 46 addresses the issues surrounding the retention of e-mail messages as public records with specific directions on how state agencies are to comply with state and

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federal rules of evidence regarding e-mails and the e-mail system that delivers and stores them. (http://www.documents.dgs.ca.gov/osp/recs/ERMHbkall.pdf) Additionally there are directives regarding that procedures must be in place to transfer records from the e-mail system to another electronic recordskeeping system to meet retention requirements.

It would helpful for the City Attorney to provide guidance as to the requirements City officials and City employees must meet with the retention of e-mails and other electronic documents received or generated in the course of official business.

Recommendation: Request the City Attorney to provide guidance concerning the appropriate policies and procedures for retention of electronic documents, including but not limited to e-mails, by elected and appointed officials (i.e. Harbor, Water, Planning, Parks, Recreation and Marine, and Civil Service commissioners) and city employees, in order to comply with the Brown Act, the California Public Records Act and State and Federal rules of evidence.