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TO: Technology Committee, City of Hudson
FROM: Crystal R. Peck, Esq.
RE: Electronic Records

As requested, I have reviewed the various provision of the City Charter and City Code which requires written notice.

Provisions which require written notices to be delivered internally to various City Officials include (but may not be limited to):

Charter

C3-3 State and Notice of Result of Election (requires written notice of election results to be served by the City Clerk on each person elected to office personally or leaving notice at their residence).

C3-7 Special Meetings to Make Appointments, failure to appoint. (requires written notice of a special meeting called to appoint elective officers to be served on the Mayor, Council President, and each council member by mail or hand delivery)

C5-4 New Bonds May be Required (requires notice with certifies resolution to be delivered to City officers personally or by leaving notice at their residence)

C7-5 Notification of Election (requires City Clerk to serve each person declared elected by the Common Council written notice of their election or appointment)

C12-4 Special Meetings; how called; notice; scope (requires written notice of all special meetings to be served on the Mayor and each member of the Common Council by mail or hand delivery)

Code

§45-9 Disposal of Records. Requires RMO to provide written consent to each department head prior to destruction of records.

The Electronic Signature and Records Act (ESRA) allows for local governments to adopt policies and procedures to accepts electronic signatures and records. A copy of the Regulations as it pertains to electronic records is attached to this Memo. While in certain instances the Council may be able to simply adopt a policy/procedure to allow for the notice to be provided electronically (i.e. C7-5 and §45-9), ESRA cannot be relied on where a law or statute does not

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allow for it. For example, where the Charter/Code calls for delivery by mail or personal service of a notification, the Council would need to adopt a law or Charter/Code Amendment which allows for notification to be provided by electronic transmission rather than personal service or mail. In doing so, I would caution against providing for electronic transmission of notification required by C5-4 where the notification effects the removal of office of a City official.

Compilation of Codes, Rules and Regulations of the State of New York

Title 9. Executive Department

Subtitle N. Office of Information Technology Services

Part 540. Electronic Signatures and Records Act (Refs & Annos)

9 NYCRR 540.5

Section 540.5. Electronic records

Currentness

(a) An electronic record used by a person shall have the same force and effect as those records not produced by electronic means.

(b) Pursuant to ESRA and this Part, governmental entities are authorized and empowered to produce, receive, accept, acquire, record, file, transmit, forward and store electronic records. If any governmental entity uses electronic records it shall:

(1) ensure that anyone who uses the services of such governmental entity may obtain access to records as permitted by law, and may receive copies of such records in paper form in accordance with fees prescribed by law;

(2) not refuse to accept hard copy, non-electronic forms, reports, and other paper documents for submission or filing, except as otherwise provided by law; and

(3) not require the submission or filing of any record electronically, except as otherwise provided by law.

(c) All laws applicable to government records shall be applicable to electronic records maintained by governmental entities, including, but not limited to, retention, accessibility and disposition requirements established under the Arts and Cultural Affairs Law or the Judiciary Law.

(d) Governmental entities shall employ procedures and controls designed to ensure the authenticity, integrity, security and, when appropriate, the confidentiality of electronic records.

(e) Governmental entities using electronic records shall, in the absence of specific statutory or regulatory requirements, have the authority to specify the manner and format in which electronic records will be received, produced, accepted, acquired, recorded, filed, transmitted, forwarded, acknowledged and stored. For the purposes of ensuring the receipt of electronic records, governmental entities must designate the receiving device.

Credits

Sec. filed: March 28, 2000 as emergency measure; June 15, 2000 as emergency measure; Aug. 7, 2000 as emergency measure; Oct. 3, 2000 as emergency measure; sec. filed Oct. 3, 2000 eff. Oct. 18, 2000; emergency rulemaking eff. Oct. 18, 2002, expired Jan. 15, 2003; emergency rulemaking eff. Jan. 14, 2003, expired March 14, 2003; amended by emergency rulemaking eff. March 14, 2003, expired May 12, 2003; adopted filed April 22, 2003 eff. May 7, 2003; amds. filed Oct. 21, 2010 eff. Nov. 10, 2010.

Current with amendments included in the New York State Register, Volume XLIV, Issue 16 dated April 20, 2022. Some sections may be more current, see credits for details.

N.Y. Comp. Codes R. & Regs. tit. 9, § 540.5, 9 NY ADC 540.5