

New Year? Time for a New Records Retention Policy

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Have you made a New Year's Resolution to clean up your district's office, sort through old files, or get rid of clutter on your server? Before you follow Marie Kondo and toss anything that does not bring you joy, remember that special districts are legally required to hold on to certain records permanently or for a set period of time. Therefore, your first step toward a more organized 2021 should be to adopt a records retention policy that sets forth which documents need to be kept and which can be destroyed.

Luckily, you are not on your own. The Colorado State Archives works to "provide best practices and guidelines for the administration of government created records," including special district records. In coordination with SDA and DOLA, the State Archives created a Special District Records Management Manual that sets forth guidelines on how long to retain each type of document. The Manual is available at: <https://www.colorado.gov/pacific/archives/special-districts-records-management-manual-0>. In addition, the State Archives provides other resources for organizing your documents and guidance on specific questions like whether to store paper or electronic versions of your records; whether a district needs to retain emails and social media posts; and how to destroy documents when no longer need-

ed. Finally, if a district has records that must be maintained permanently and are not in active use, such as old agendas, minutes, resolutions, or records of historical import, the documents can be transferred to the State Archives for storage.

This article provides additional detail on why and how to adopt a records retention policy, but given the breadth of the subject, feel free to reach out to the State Archives, your district's attorney, or the author, Carolyn Steffl, if you have additional questions.

Why Adopt a Records Retention Policy?

A retention policy is required for digital documents.

Under the Colorado Open Records Act (CORA), a special district's official custodian is required to adopt a policy regarding the retention, archiving, and destruction of public records which are kept only in miniaturized or digital form. (§24-72-203, C.R.S.) Public records are defined broadly as including all writings (books, papers, maps, photographs, recordings, emails, etc.) that are made, maintained, or kept by any special district and held for use in functions required or authorized by law or involving the receipt or expenditure of public funds, unless an exception applies. (§24-72-202(6)-(7), C.R.S.) Many digital documents and files may be considered

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public records such as: emails, texts, website postings, GIS maps, videos, word and pdf documents, documents saved on thumb drives or DVDs, audio tapes, and more. As the world becomes increasingly digitized, a records retention policy is required for most, if not all, special districts.

Having a retention policy will minimize the risk of destroying documents that the district is legally required to maintain.

Under Colorado and federal law, special districts are required to maintain different types of documents for specific time periods. Adopting a records retention policy will minimize the risk of destroying documents that your district is required to retain, reducing the risk of legal liability or bad publicity. Some examples of documents that must be retained for a minimum amount of time (this is by no means a complete list) include:

- » Recordings of executive sessions must be retained for 90 days after the executive session.
- » Some documents need to be retained permanently, including annual reports, certified election results, final budgets, agendas, minutes, bylaws, and resolutions.
- » The District *may not* destroy any documents that are relevant to pending or anticipated litigation, claims, actions, or audits.

The State Archives' Records Management Manual for special districts includes required or recommended retention periods for each type of document, based on the type of record (minutes, deeds, etc.). When you adopt a records retention policy, it is also a good time to consider the method of storage to make sure that documents will be available in perpetuity, even if the software for reading electronic documents changes over time.

Having a retention policy will allow you to destroy documents that are no longer needed.

There are lots of reasons why a district would not want to retain every document, including: (a) records take up a lot of physical and digital space; (b) it can be hard to locate the most important documents; (c) responding to document requests becomes more

cumbersome and costly if you hold onto all records perpetually; (d) the district may have duplicate and draft copies which are not needed, creating confusion about the final version; and (e) moving offices or changing computer software means transferring all of the documents to their new home, a costly and time-consuming proposition.

Once a special district adopts the Special District Records Management Manual with approval by the State Archives, the State Archives will send that district an annual letter authorizing destruction of documents that no longer need to be retained under the Manual. Destroying old documents on an annual basis, after receipt of that letter, avoids haphazard destruction that could create a perception that the district is trying to hide something. The district then files a certification of records disposal summarizing the amount of documents destroyed and the method of disposal. This provides a paper trail in case you are looking for a record in the future.

How to Adopt a Records Retention Policy

A special district can adopt the form Special Districts Records Management Manual or draft and adopt its own specific records retention policy. Since it would take a lot of work and legal review to draft a policy from scratch, this is not an appealing option for most districts. However, if you have unique needs, you can adopt the state's Records Management Manual with specific exceptions, for example if district bylaws, rules, or resolutions require retention of a particular type of document longer than the recommended period of time. The records retention policy should be adopted by resolution, and the State Archives provides a sample resolution. See <https://www.colorado.gov/pacific/archives/common-records-management-documents>

Next, the district must complete and submit the approval request form to the State Archives, requesting permission to use the Special District Records Retention Manual and noting any applicable local exceptions. Barring any local exceptions, the standard retention schedule will control. The approval remains effective indefinitely, unless rescinded by the special district or the State Archives. Special districts are required to consult with the State Archives in the event any changes need to be made to the schedule.

There are several advantages to participating in the State Archives' program, two

of which are (1) reassurance that the policy complies with state law and is sanctioned by the State Archives; and (2) support from the State Archives to implement the policy. The Records Management Manual is comprehensive and searchable. It is organized by the type of document -- building records, election records, financial records, etc. Under the policy, the retention period is based on the content, not the physical form of the record (paper, email, computer disk, etc.). If you cannot find a specific type of document on its list, you can call the State Archives with questions.

The State Archives maintains a list of special districts that have adopted the form Records Management Manual. A participating special district will annually receive a records retention disposition authorization from the State Archives. This notice provides legal authorization to destroy certain documents in accordance with the schedule. As necessary, it may require the special district to preserve certain records if required by the Attorney General or the State Auditor or due to pending litigation. Once the special district has disposed of the records, the special district must return a certificate of disposal form to the State Archives.

Adopting a records retention policy is a big task. The Special District Records Management Manual is around 125 pages long. Implementing a records retention policy involves the upfront work of inventorying existing documents, as well as annually reviewing the policy and records, destroying documents, and submitting a report on the records destroyed. But, if you are ready to take on the task of organizing your documents and paring down those that you do not need to keep, a records retention policy is the way to go. In the long run, it will be easier to find what you need and will streamline district operations for 2021. 🍋

