

**Council Policy #CP-24
Adopted by Resolution 2021-95**

SUBJECT: Council Social Media Activity

POLICY STATEMENT: This policy provides guidelines and rules for the use of social media by councilmembers in their official capacity as individual members of the Council. This policy is intended to protect the rights of the public, to ensure compliance with existing law, and to protect the City and councilmembers from liability. This policy is not intended to restrict the rights of individual councilmembers from expressing their view or interacting with constituents.

A. DEFINITIONS

Account: A councilmember’s presence on social media either in his or her official capacity as a councilmember, whether by designation or based upon use. A social media account for personal use may be subject to this policy and the limitations expressed in it based on the nature of the use.

Personally identifiable information: Information that can be used to distinguish or trace an individual’s identity, such as date and place of birth, personal addresses or telephone numbers, Social Security number, driver’s license number, or records that contain genetic, medical, or psychological data or information. Personally identifiable information also includes personal financial information and other information maintained because of the employer-employee relationship, pursuant to Section 24-72-202, C.R.S. For purposes of this section, “personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

Posting: placing content on an account or any social media site in a councilmember’s official capacity. Posting does not include personal use of social media that does not make use of their City e-mail address, position, title, or official capacity, City branding, and which does not involve excessive discussion of the business or affairs of the City.

B. INDIVIDUAL RESPONSIBILITY FOR SOCIAL MEDIA ACTIVITY

1. Councilmember are not expected or required to use social media. Councilmembers may engage freely in official or personal use of social media, but personal use should not involve excessive discussion of City business.
2. If a councilmember chooses to use social media using their official title or to discuss the business or affairs of the City, members of the Council are solely responsible for such use. Any such use of social media communication, that is not operated, maintained or used in compliance with this policy shall be considered outside of the councilmember’s official capacity and the City shall bear no responsibility for

what transpires on or because of those accounts, including without limitation no responsibility to defend or indemnify a councilmember.

3. The City does not create, operate, or maintain accounts for the use of councilmembers. Staff may assist by providing generic content and assisting with design or branding standards.

C. GENERAL STANDARDS FOR SOCIAL MEDIA USE

1. *Decorum.* Councilmembers shall comply with generally-applicable Council Policies when using social media.
2. *Restricted Content.* Councilmembers shall not post any of the following:
 - Posts discriminating or promoting discrimination on the basis of race, creed, color, age, religion, sex, marital status, sexual orientation, national origin, weight, height or genetic information;
 - Degrading or obscene language or comments;
 - Defamatory, libelous, offensive, or demeaning material, or engaging in a combative exchange;
 - Sexual content or links to sexual content;
 - Comments on legal proceedings or ongoing investigations or items that may be the subject of such in the future, except with the written permission of the City Manager and City Attorney’s Office;
 - Harassing statements;
 - Solicitations of commerce except as part of City-sponsored events or the promotion of businesses in the City;
 - Conduct or encouragement of illegal activity;
 - Confidential, proprietary information or non-public information;
 - Information that may tend to put at risk the safety and security of the public or public systems;
 - Comments supporting or opposing political campaigns or ballot questions, except for reporting resolutions approved by the City Council;
 - Personal identifying information of any person without their consent; and
 - Threatening comments about or related to anyone.
3. *Terms of Use.* All accounts are subject to the Terms of Use (Exhibit A). Accounts should include the Terms of Use in a place visible to the public or a link to the Terms of Use (or this policy).
4. *Disclaimers.* Councilmembers are encouraged to use a disclaimers when posting, such as, “The posts on this account are my own and do not necessarily represent the positions or opinions of the City of Commerce City or its City Council.”

5. *No expectation of privacy.* Councilmember accounts and posts may be open to public inspection in accordance with the Colorado Open Records Law. Councilmembers do not have an expectation of privacy concerning any accounts or any posts made in an official capacity.

D. LEGAL STANDARDS FOR SOCIAL MEDIA USE

1. *Intellectual property.* Councilmembers are solely responsible for the use of material that is copyrighted or trademarked by third parties.
2. *First Amendment protection.* Councilmembers shall not knowingly restrict any account or posts in such a way as to restrict any person's ability to view or post comments on the account based in any way upon the viewpoint of that person's speech.
 - a. Councilmember accounts shall be visible to the general public, except when to full public posting is not possible through a particular platform.
 - b. Councilmembers will not knowingly "block" or otherwise restrict access of any individual or group from viewing the account or responding to any post, except as such restrictions apply to all members of the public. Where an account is used to moderate or lead an exclusive group, the councilmember controlling the account will not knowingly "block" or otherwise restrict access of any individual or group from such group, except as such restrictions apply to all members of the public, and will not knowingly restrict posting abilities or delete posts, comments, or responses involving the discussion of public business or cause anyone else to do so, except as provided in subsection (c), below.
 - c. If the councilmember allows any person to post, comment, or respond to any post on the account or post by the councilmember, the councilmember will not knowingly delete any posts, comments or responses except to the extent that:
 - i. A post violates the Terms of Use (if posted or linked);
 - ii. The councilmember preserves a copy of the post and notifies the commenter, to the extent possible, that the posting was removed.
3. *Open Meetings Law Compliance.* Councilmembers should not knowingly comment on any post where more than one other councilmember has posted regarding any business of the City.
4. *Quasi-judicial proceedings.* Councilmembers should use caution when using social media to the extent that a quasi-judicial matter could be involved and should refer to applicable Council Policies.
5. *Retention.* Councilmembers will not delete posts or messages on accounts except in accordance with the applicable retention schedule.

EXHIBIT A TO CP-24

CITY OF COMMERCE CITY COUNCIL SOCIAL MEDIA TERMS OF USE

This account is owned and maintained by Commerce City councilmember identified in the account. The purpose of this account is to discuss matters of public interest in and to the Commerce City as identified and raised by the councilmember for discussion. This is a forum limited to the specific topics identified and raised by the councilmember.

1. The posts and content posted by the councilmember on this account are those of the councilmember and do not necessarily represent the positions or opinions of the Commerce City, its City Council, or any of its officers, employees, and agents ("City"). The councilmember is solely responsible for this account.
2. Neither the councilmember nor City accept responsibility based on the actions of others in connection with this account or for creating or using this account. Comments and content posted by any other person are the views of the author and do not reflect the positions or opinions of the councilmember or the City.
3. Individual complaints, concerns, or service requests are best addressed by asking Commerce City directly at www.c3gov.com/living-in/ask-c3. Your request or question may be a public record and subject to disclosure. Public records requests are not received through this account.
4. To protect your privacy and the privacy of others, do not include sensitive personally identifiable information, such as social security numbers or personal contact information.
5. Posts and comments to this site may be removed in a viewpoint neutral manner under the terms of the Council Social Media Activity policy and as allowed by law.
6. The councilmember reserves the right to discontinue this account or to restrict access or ability to comment in a generally applicable manner at any time.
7. Practical and legal considerations may sometimes constrain, prevent, or prohibit discussion by the councilmember of certain topics, including, but not limited to litigation, pending investigations, land use matters, personnel issues, and other topics through various media including social media. Comments and posting by councilmembers may be limited by the provisions of the Colorado Open Meetings Law.
8. Following or "friending" persons or organizations or liking posts is not an endorsement by the councilmember or the City and is only intended as a means of communication.
9. External links:
 - a. Any references or links to a specific entity, product, service or organization posted by individuals on this account should not be considered an endorsement by the councilmember or the City.
 - b. The views and opinions of authors expressed on websites linked from this account do not necessarily state or reflect the opinion of the councilmember or the City and may not be quoted or reproduced for the purpose of stating or implying any endorsement or approval of any product, person, or service by the councilmember or the City.
 - c. Neither the councilmember nor the City are responsible for content that appears on external links. Neither the councilmember nor the City are responsible for or guarantee the authenticity, accuracy, appropriateness or security of any link, external website or its content.

10. Terms of Use:

- a. I am submitting content voluntarily and on my own behalf.
- b. The content I post reflects my own original thoughts or work.
- c. I understand that the councilmember and the City have the right to re-post and share any content, photos or videos that I submit on this account.
- d. I understand that any content I provide may be considered a “public record” under Colorado law.
- e. I understand and agree that this account is not the proper vehicles for making requests for public information or public records under state law and any such requests must be made to the appropriate custodian of the records.
- f. I understand and agree that my and others’ comments are subject to archiving and disclosure and are not private.
- g. I understand and agree that my comments and others’ comments are subject to removal in whole or in part from this site if my or their comments contain:
 - comments not directly on the topic raised for discussion by the councilmember’s initial post or their subsequent comments and obviously related to Commerce City business;
 - obscene, indecent, or profane language, or pornographic images;
 - direct threats;
 - content that promotes discrimination on the basis of race, color, creed, sex, sexual orientation, national origin, ethnicity, age, disability, or gender identity;
 - the solicitation, promotion or endorsement of specific commercial services, products or entities;
 - links to any site or content posted by automatic software programs (i.e. “bots”);
 - the promotion or encouragement of illegal activity;
 - personally identifiable information or sensitive personal information that if released violates federal or state law;
 - information that compromises the public safety or security of the public or security systems;
 - information that directly interferes or compromises ongoing investigations, public safety tactics, or the safety of public safety officers;
 - confidential information; or
 - appear to violate the intellectual property right of the City or a third party under federal or state law.

11. Waiver of Liability. I, for myself, successors, heirs, and assigns, release and hold harmless Commerce City, including its officers and employees, from any and all actions, claims, liabilities and damages of whatever kind and nature arising out of or in connection with my use of this account, including without limitation any of the foregoing related defamation, invasion of privacy, false light, breach of contract, procurement violations, and violations of due process.

END