

Council Policy #CP-__
Adopted by Resolution 2021-__

SUBJECT: Council Social Media Activity

POLICY STATEMENT: This policy provides guidelines 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 in their ability to access public forums, to protect the City and councilmembers from liability, and to ensure that the City is able to comply with its requirements under the laws of the State of Colorado and the United States of America.

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.

Personal use: a councilmember's use of social media that does not make use of their City e-mail address, position, title, or official capacity, and which is not used for excessive discussion of the business or affairs of the City.

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.

Restricted content: Content including 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; and
- Threatening comments about or related to anyone.

Social media: Forums to convey important information to the public through networks of people. Some forums provide for two-way communication. Examples of Social Media include, but are not limited to Facebook, Twitter, Instagram, YouTube, Nextdoor, LinkedIn, Google Location Pages, Wiki, and Yelp. This type of technology changes rapidly; this definition should not be construed to limit the applicability of this policy.

B. INDIVIDUAL RESPONSIBILITY FOR SOCIAL MEDIA ACTIVITY

1. Councilmember are not expected or required to use social media.
2. If a councilmember chooses to use social media in their official capacity, members of the Council are solely responsible for their accounts. Councilmembers are expected to understand and stay current regarding any social media terms of service and policies.
3. Councilmembers shall not establish, operate, maintain, or use any accounts other than in accordance with this policy and applicable law.
4. Any councilmember account created, operated, maintained, or used for the purpose of conducting City-related business, including, without limitation constituent communication, that is not operated, maintained or used in compliance with this policy, shall be considered as having been undertaken, maintained, and used outside of the councilmember's official capacity. In such cases, 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.
5. Any account must be separate and distinct from social media accounts for personal use.

6. The City does not create, operate, or maintain social media accounts for the use of councilmembers. Staff support for councilmember accounts will be limited to:
 - a. Providing generic content for use by the City and any councilmember to ensure consistent messaging;
 - b. Providing assistance with implementing current City graphic design standards and branding guidelines;
 - c. Posting generic content to a councilmember's account, provided the councilmember releases the individual and the City from any responsibility for the account or the maintenance of password information;
 - d. Obtaining specific advice from the City Attorney regarding the removal of any content from an account or whether an item constitutes a quasi-judicial matter, which advice will be distributed to all councilmembers; and
 - e. Assisting with other content where specifically authorized by the Council.

Councilmembers who exceed their authorization or who violate this policy, as determined by the Council, may have their privileges to receive staff support revoked.

C. GENERAL STANDARDS FOR SOCIAL MEDIA USE

1. *Identification.* Councilmembers must identify themselves by name and position title and use their city e-mail address when participating in social media websites in their official capacities. Such accounts shall be clearly designated as “official capacity” accounts.
2. *Accuracy.* Councilmembers are expected to post only accurate information and should not knowingly misrepresent facts or engage in speculation. If in doubt, councilmembers should refer to the City's website and appropriate staff contacts or contact the City Manager for information.
3. *Decorum.* Councilmembers should use accounts to benefit the city and the city council and to improve discourse and understanding in the city. Councilmembers shall not use ethnic slurs, profanity, or personal insults in any posts and shall not post any restricted content.
4. *Confidential information.* Councilmembers shall not post any confidential, proprietary, or sensitive information, including privileged communications and internal communications not designated for public dissemination or any information derived from such communications.
5. *Personal information.* Councilmembers shall not post personal identifying information of any person without that person's consent.

6. *Individual positions.* No councilmember, without specific authorization from the city council, shall represent or give the perception in any post that he or she is representing the city or the city council: (i) on issues that involve the general interests of the council as a whole; (ii) on issues that are matters of city policy; or (iii) on issues in which the council has been engaged or involved as an entire body. Councilmembers are encouraged to use a disclaimer in posts to their or other accounts when appropriate, 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.”
7. *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.
8. *Terms of Use.* All councilmember accounts are subject to the Terms of Use (Exhibit A). Councilmember accounts shall include the Terms of Use in a place visible to the public, or if not possible, a link to the Terms of Use in a prominent location that is visible to the public.

D. LEGAL STANDARDS FOR SOCIAL MEDIA USE

1. *Intellectual property.* Councilmembers using social media in their official capacities shall not post, use, or otherwise comment upon material that is copyrighted or trademarked by third parties. Credit shall be provided to other authors for borrowed content and to protect the intellectual property of others.
2. *First Amendment protection.* Councilmembers shall not 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 to the extent that full public posting is not possible through a particular social media platform.
 - b. Councilmembers will not “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 “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 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 delete any posts, comments or responses except to the extent that:
 - i. A post violates the Terms of Use;
 - ii. The Terms of Use were properly was posted or linked on the site;
 - iii. The councilmember confers with the City Attorney prior to taking any action; and
 - iv. 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.* To comply with the Colorado Open Meetings Law, councilmembers shall not comment on any post where more than one other councilmember has posted regarding any business of the City. Councilmembers are encouraged to avoid commenting on each other's posts or where any other councilmember has commented.
4. *Quasi-judicial proceedings.* Councilmembers shall not post, comment, respond to, or review any post on any social media account regarding a matter that is scheduled to come before the City Council for a quasi-judicial decision (where the council acts as a judge). If such a matter arises, the councilmember may respond that he or she is not authorized to respond and should encourage the commenter to contact the appropriate staff representative. Councilmembers should exercise caution when reviewing social media activity to the extent that *ex parte* information regarding a quasi-judicial matter could be obtained. Any such posts, comments, responses, or review shall be disclosed to the City Council in accordance with applicable policies and may disqualify the councilmember from participating in such decision.
5. *Retention.* Councilmembers will not delete any post or message on an official social media account maintained by the Councilmember except in accordance with the applicable retention schedule.

D. PERSONAL USE OF SOCIAL MEDIA

1. Councilmembers may engage freely in personal use of social media using accounts not affiliated with the City. Councilmembers should avoid using such personal accounts for the discussion of any business or affairs of the City or for speaking as a representative of the City. If necessary to do so, such posts should: (1) refer other users to the councilmember's account; and (2) comply with the requirements of this policy especially with regard to ensuring public visibility of any posts and the limitations on the deletion of comments.

2. Excessive discussion of the business or affairs of the City, or speaking as a councilmember, through a social media account for personal use may subject such account to this policy and the limitations expressed in it.
3. Councilmembers shall not use the trademark, or logo of the City, or that of any City department or program, in any personal use of social media.

EXHIBIT A TO CP-14

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 vehicle 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.

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