



**LACEY CITY COUNCIL
WORKSESSION
THURSDAY, FEBRUARY 15, 2018
7:00 – 8:30 P.M.
LACEY CITY HALL – 420 COLLEGE STREET SE**

AGENDA

- 7:00 TRAINING FOR OPEN PUBLIC MEETINGS**
*JEFFREY MYERS, LAW, LYMAN, DANIEL, KAMERRER & BOGDANOVICH
(VERBAL - PRESENTATION)*
- 7:45 SOCIAL MEDIA POLICY REVIEW**
*CANDICE BOCK, DIRECTOR OF ADMINISTRATIVE SERVICES
(STAFF REPORT ATTACHED)*
- 8:30 ADJOURN**



Lacey Council Worksession February 15, 2018

SUBJECT: Council Social Media Policy

RECOMMENDATION: Review and discuss draft Social Media Policy and recommend adoption by full Council.

STAFF CONTACT: Scott Spence, City Manager *SS*
Candice Bock, Director of Administrative Services *CB*

ORIGINATED BY: Administrative Services Department

ATTACHMENTS:

1. [Draft proposed City Council Social Media Policy](#)
2. [AWC guidelines for elected and appointed officials using social media](#)

FISCAL NOTE: There will be some cost to implement official social media accounts for Councilmember. The costs can be absorbed in the current budget.

PRIOR REVIEW: General Government & Public Safety Committee 12/11/2017

BACKGROUND:

The City Council has an adopted Polices-Procedure Manual. In this document, there is a placeholder in the communications section regarding social media. Staff is recommending at this time that the Council consider adopting a policy governing councilmember use of social media.

The City has an adopted Technology Policy with a section on the use of the city's official social media accounts. The purpose of a City Council policy is to address individual use of social media and how individual councilmembers who use social media can comply with open government requirements.

Staff is recommending that Council have the option of having a city-created official Facebook page for their official use. Additionally, staff is recommending that Councilmembers not use personal social media accounts for city business and post a disclaimer on those accounts to minimize the likelihood that they would be used for any official purpose.

Under the law, a city official's use of a personal social media account can be considered a public record and subject to retention and disclosure requirements if it is used for city business, which could include things like responding to constituent questions about city policies or activities. Additionally, there is the possibility of use of a social media account being considered an open meeting violation under certain circumstances.

ADVANTAGES:

1. Adopting a policy will assist councilmembers in appropriately using their official and personal social media accounts in a way that complies with applicable state laws and open government requirements.
2. Providing councilmembers with official Facebook pages will allow for better compliance with open government requirements.

DISADVANTAGES:

1. There will be staff and city resources required to implement official Facebook pages for interested Councilmembers.
2. The policy may require individual councilmembers to alter their personal social media account usage.

Draft for review by City Council 2-15-2018

City Council Policies – Procedures Manual

Communication Chapter 5

5.09 City Council use of Social Media

This policy establishes a formal process and standards for the use of social media by Elected Officials (Mayor and Councilmembers) in their official capacity. The purpose of social media sites/tools owned or maintained by the City of Lacey for Elected Officials is to provide a limited forum for Elected Officials to communicate with their constituents and members of the public regarding subjects directly related to the City of Lacey and the Lacey community.

The provisions of this policy shall apply only to social media sites/tools owned or maintained by the City of Lacey, including sites/tools established by the City for elected officials. It is primarily each Elected Official's responsibility to ensure compliance with this policy.

It is the city's preference and intent that elected officials only use social media sites/tools owned or maintained by the City of Lacey to communicate in their official capacity. The use of private social media sites/tools for this purpose is strongly discouraged. Elected officials are asked to include the disclaimer in Exhibit B on all personal social media accounts to avoid confusion and potential violations of open government requirements.

DEFINITIONS

"Chat" is a feature that allows instant messages to be sent.

"Comment" is a response to a post, an article, or other social media content submitted by a visitor.

"Elected Officials" includes Mayor, Councilmembers, and any staff working on an Elected Official's behalf to represent him or her, using a social media tool.

"Reacting" is a feature that allows users to show their reaction to specific comments, pictures, wall posts, statuses, or fan pages. The "reaction" button allows users to show their appreciation, dislike, or other emotion for content without having to make a written comment.

"Post" is an original entry onto a social media site by the user of the site.

"Sharing" is to relay a previously created post onto a different social media site.

"Social Media" are third-party hosted online technologies that facilitate social interactions and dialogue. These online technologies are operated by non-city hosted services and may be used by the Elected Officials to communicate with the public. Such third party hosted services/tools may include, but are not limited to: social networking sites (Facebook, Linked-In), micro-blogging tools (Twitter, Instagram, Snapchat), audiovisual networking sites (YouTube, Vimeo), and blogs (Wordpress, Tumblr, etc.)

“Tagging” is a mechanism of linking a person, page, or place to a post.

“Visitor” is a person who views an Elected Official’s social media site.

GENERAL POLICY

While social media, with its use of popular abbreviations and shorthand, does not adhere to standard conventions of correspondence, the content and tenor of online conversations, discussions, and information posts and comments should model the same professional behavior displayed during Council meetings and community meetings.

Social media are not to be used by Elected Officials as mechanisms for conducting official city business other than to informally communicate with the public. Examples of business that may not be conducted through social media include: making policy decisions, official public noticing, and discussing confidential City matters that have not been approved for release to the public. Elected Officials’ social media site(s) should contain links directing users back to the City’s official website for in-depth information, forms, documents, or online services necessary to conduct official city business.

ADMINISTRATION, ENFORCEMENT, AND DISPUTE RESOLUTION

The City’s Director of Administrative Services shall have primary responsibility to administer and enforce the provisions of this policy with respect to social media sites/tools owned or maintained by the City of Lacey.

The City’s Director of Administrative Services, following consultation with the City Attorney, may cause categories of official City of Lacey social media applications, tools, or sites to be permanently or temporarily discontinued if they are not or cannot be used in compliance with this policy. The Director shall exercise such discretion in a viewpoint-neutral, evenhanded, and non-arbitrary manner.

CONTENT RESTRICTIONS - ETHICS AND ELECTIONS RULES OF COMPLIANCE

All content posted on individual Elected Officials’ social media sites shall comply with applicable Council Rules of Procedures, City ordinances and administrative rules, and Washington State law regulating public agencies and elected officials.

Social media sites/tools owned or maintained by the City of Lacey shall not contain posts, comments, or links to any content that supports or opposes political candidates or ballot propositions, including, without limitation, links to an Elected Official's campaign site.

For social media sites/tools that are owned or maintained by the City of Lacey, no content that promotes or advertises commercial services, entities, or products may be posted.

Elected Officials will not post or release proprietary, confidential, or sensitive information on social media sites in a manner that violates applicable state law, including, without limitation, RCW 42.23.070 – Prohibited Acts.

PUBLIC RECORDS ACT COMPLIANCE

Content maintained in a social media format, whether on a city-owned account or personal account, that is related to City business, including communication between an individual Elected Official and constituents or the general public, and a site's listing of "friends" or "followers," may be considered a public record subject to disclosure under the state Public Records Act.

State and local records retention laws and schedules apply to social media content. All social media content that is required to be retained shall be maintained for the legally required retention period based on the subject matter of the content. Social media accounts owned or maintained by the City of Lacey, will be retained through the City's archiving system.

Any social media tools used should clearly state that all content submitted by members of the public is potentially subject to public disclosure pursuant to the Public Records Act, RCW 42.56. If it is not possible to display this notice prominently on the site, Elected Officials should notify users by including a link from the site to the Public Records Act notice set out in Exhibit A, notify new users via response to posts, and/or periodically notify existing users via broadcast message.

Users of, and visitors to, social media sites shall be notified that public disclosure requests must be directed to the appropriate City Public Records Officer pursuant to the City's Public Records Disclosure Policy.

Councilmembers should avoid using their official city account to comment on another social media accounts because those comments may not be captured for public records purposes.

OPEN PUBLIC MEETINGS ACT AND APPEARANCE OF FAIRNESS DOCTRINE COMPLIANCE

Communication between Councilmembers via social media, as with telephone and email, may potentially constitute a "meeting" under the Open Public Meetings Act, Chapter 42.30 RCW.

For this reason, Councilmembers are prohibited from participating in social media discussions/threads regarding City business that involve a quorum of Council Members, and are strongly discouraged from "friending" of "following" other Councilmembers or reacting to other Councilmember's posts.

In addition, receiving or making posts or comments regarding quasi-judicial matters via social media may violate Council Policy and Chapter 42.36 RCW – the Appearance of Fairness Doctrine. To avoid receiving any comments on pending quasi-judicial matters that may violate the Appearance of Fairness Doctrine, Councilmembers are strongly encouraged to maintain social media sites with settings that can restrict users' ability to post content.

CONTENT GUIDELINES AND RESTRICTIONS

For social media sites/tools owned or maintained by the City of Lacey, users and visitors of social media sites who submit comments should be clearly notified that the intended purpose of the site is to serve as a mechanism for informal communication between Elected Officials and the public regarding the City-related topics discussed. If the public is allowed to post comments to an Elected Official's site, the Use Policy set out in Exhibit A must be displayed or made available by hyperlink.

Councilmembers are not allowed to post links to their personal social media accounts or "cross-post" between personal and official city accounts.

Any content removed in compliance with the Use Policy must be retained, including the time, date, and identity of the poster when available, to the extent required by law. See above Records Act Compliance.

EQUAL ACCESS

Elected Officials are discouraged, in their official capacity, from posting or commenting on social media sites that require membership or subscription. When posting information or soliciting feedback on such a site, Elected Officials should always provide an alternate source for the same information or mechanism for feedback on the City's public web site, so that those who are not members of the social media site may have equal access.

EXHIBIT A - DISCLAIMER FOR OFFICIAL CITY ELECTED OFFICIAL ACCOUNTS

The following content will be removed from this site:

- (1) comments not related to the specified topics for discussion;
- (2) posts or comments in support of or opposition to political campaigns or ballot measures;
- (3) profane or obscene language;
- (4) posts or comments espousing or conveying racially, ethnically, religiously, gender-oriented, discriminatory comments;
- (5) solicitations and/or transactions of commerce;
- (6) sexual content or links to sexual content;
- (7) encouragement, promotion or undertaking of illegal activity;
- (8) information that may tend to compromise the safety or security of the public or any City equipment, property or system;
- (9) content that violates a legal ownership interest of any party; and
- (10) posts or comments that would constitute ex parte communications in violation of the Appearance of Fairness Doctrine.

EXHIBIT B - DISCLAIMER FOR PERSONAL ACCOUNTS OF ELECTED OFFICIALS

- The views expressed represent the views of the author and may not reflect the views of the Lacey City Council.

- Responses to this communication by other Councilmembers may be limited by the provisions of the Open Public Meetings Act under which a policy discussion must be held in an open public meeting if a quorum of the City Council participates.
- Posts, comments, or other content posted to this site, may be considered public records subject to public disclosure under the Washington State Public Records Act (RCW 42.56).



Guidelines for elected and appointed officials using social media

Social media is a tool growing in popularity for developing direct communications with your community and creating informal opportunities to reach out beyond official publications. City policies should cover the “official” city account, employee use of social media inside and outside of work, and elected official use of social media.

The extent to which a jurisdiction or individual uses social media varies. Before engaging you should assess your risk tolerance and make sure certain laws – such as the Public Records Act and Open Public Meetings Act – are followed.

A few clarifying definitions...

Social media can include websites and applications that enable users to create and share content or to participate in social networking.

A social platform is a web-based technology that enables the development, deployment and management of social media solutions and services.

A third-party system is any system maintained by another entity. This could include Twitter, Facebook, Wordpress, Google, phone carriers, and more.

Know when social media is a public record

A recent court decision (*Nissen v. Pierce County*) case outlined a test for when a document on a third-party system is created within the “scope of employment” and is a public record. Scope of employment may include elected officials acting within their capacity as a mayor or councilmember. This includes when an employee or elected official is:

- Required by the job duties *or*
- Directed by the employer *or*
- In furtherance of the employer’s interests

Retention of documents, including social media, is based on the content and not the platform. City policy should consider retention and adopt a process outlining responsibilities.

Make a clear distinction between official accounts, campaign accounts, and personal accounts

One way elected officials and staff can clearly distinguish private social media accounts is by adding disclaimers on election and personal accounts, and not using the account for city business. *City-sponsored accounts may not be used for campaign-related purposes.*

To keep a personal account from becoming subject to public records, consider some basic precautions.

Do:

- Post a disclaimer on your personal account that identifies the account purpose and that the opinions you express are your own.
- Limit the account content to personal use.
- Understand and use privacy settings to manage the account.
- Have a plan in place to respond to or forward city-related comments to the city, including how the record is retained.

Don’t:

- Don’t write posts on personal accounts that would fit within the scope of employment.
- Don’t discuss your private accounts in public meetings or documents.
- Don’t link to your private accounts from an official city account.
- Don’t use city devices to maintain your private account.

First amendment and employment rights

City policies should strike an appropriate balance between privacy, liability, and public records concerns. Employees have first amendment and employment rights that need to be balanced against impacts to the image and liability of the city. City policies should provide clear guidance on use of official accounts and advice for keeping clear distinctions between official and personal accounts. (See precautions noted above.)

Develop and follow your city policy

City council policies should address situations that apply to council members and their unique needs. Specifically, council policies should address open public meetings implications, the intersection with campaign rules, impacts on council decision processes, and public records and retention issues.

- Evaluate how the elected official and city will respond if an elected official's personal account receives a complaint or public records request.
- Establish a process to follow if an elected official receives a city-related question or comment on their personal account. Outline how the question or comment will be addressed, and how the record will be retained.
- Limit "friending" or "liking" by elected officials or board members subject to the Open Public Meetings Act. While court guidance is evolving, elected officials need to avoid inadvertent serial meetings that would violate the notice and public meeting requirements. Courts have found those to occur when a chain of conversations involving "action" by a quorum of the council occurs. Passive receipt of information is generally not considered to be action.
- Council may consider adopting rules that outline usage and etiquette, including use both inside and outside of meetings.

Establish procedures for approval of official city social media use that considers retention when the accounts are created.

- Establish an approval process before a city account is created.
- Define who is allowed to post.
- Outline processes related to disclosure of passwords, regular password changes, and security.
- Know how access will be provided if requested as part of a public records request.
- Research your third-party vendor's retention policy and consider investing in retention software.
- Consider limiting posts to "secondary copies" of documents that are already available on a platform that is more easily retained, such as the website.
- Consider non-city accounts or websites your city may or may not link to. Some cities avoid linking to accounts or websites they do not control.
- Address when and how accounts could be subject to search for public records, and require employees to cooperate in searches and providing affidavits.
- Prohibit activities that would be prohibited in other contexts such as: use of public resources for campaign activities; defamatory, discriminatory, or obscene language; violations of intellectual property rights; disclosure of confidential or HIPAA protected healthcare information.

For more information

MRSC information and sample policies: [mrsc.org/Home/Explore-Topics/Management/Information-Technology/Social-Media.aspx#Wash](https://www.mrsc.org/Home/Explore-Topics/Management/Information-Technology/Social-Media.aspx#Wash)

State Archives: www.sos.wa.gov/_assets/archives/RecordsManagement/Blogs-Twitter-and-Managing-Public-Records-Nov-2013.PDF