


**CITY MANAGER'S OFFICE MEMORANDUM**  
**#30-2019**

**DATE:** May 20, 2019

**TO:** Honorable Mayor Carol Dodge and City Council Members

**FROM:** Heather Geyer, City Manager 

**SUBJECT:** Legalities of Social Media Use

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**PURPOSE**

To discuss the legalities of social media use by public officials and staff. City Attorney Corey Hoffmann has drafted a social media policy, included in Attachment 1, for City Council's consideration. A confidential memorandum will be provided to City Council from the City Attorney.

**BACKGROUND**

The draft Social Media Policy provides necessary guidance on appropriate use of social media platforms as a public official and member of staff. The draft policy covers the following areas:

- The use of personal accounts and official accounts
- Legal risks associated with social media sites
- Monitoring speech and access to accounts
- Unlawful meetings
- Confidentiality
- Communication via personal accounts
- Preservation of public documents
- Security of official accounts
- Enforcement

The draft policy was developed based on current case law and best practices for social media use. If City Council provides consensus to move forward, the draft plan will be an amendment to the Employee Guidelines.

**STAFF RECOMMENDATION**

This information is for informational purposes only. If City Council provides consensus on the draft policy, a resolution will be brought forward to the June 10<sup>th</sup> City Council meeting for adoption.

**BUDGET/TIME IMPLICATIONS**

There is no budget impact for this item.

**STAFF REFERENCE**

For additional information, please contact Heather Geyer, City Manager at hgeyer@northglenn.org or 303.450.8706.

**ATTACHMENTS**

1. Draft City of Northglenn Social Media Policy

## CITY OF NORTHGLENN SOCIAL MEDIA POLICY

### 1. BACKGROUND AND PURPOSE

The City of Northglenn has an overriding interest in deciding what is "spoken" on its behalf on social media. Social media has recently been found to be a public forum subject to First Amendment protections, and can be subject to both Colorado Open Meetings Laws, C.R.S. § 24-6-401, *et seq.*, and the Colorado Open Records Act, C.R.S. § 24-6-200.1, *et seq.* To address the fast-changing landscape of the Internet and the way citizens communicate and obtain information online, City elected officials and City appointed officials serving as members of City boards and commissions (collectively, "Public Officials") may consider using social media to reach a broader audience. The City encourages the use of social media to further its goals, where appropriate, but adopts this Policy to establish guidelines for such use of social media.

### 2. APPLICABILITY

This Policy applies to Public Officials and City staff.

### 3. DEFINITIONS

(a) "Official Account" means a Social Media account that is used for communicating with the public in relation to City-related activities, duties, or goals.

(b) "Personal Account" means a Social Media account that is used solely for communicating with the public in relation to personal activities and opinions.

(c) "Social Media" means websites and services that focus on creating and fostering online social communities and connecting users from varying locations and interest areas, including without limitation social networks (Facebook, LinkedIn, and Nextdoor), instant messaging (SMS), blogs, wikis, online collaboration (SoundCloud), microblogging (Twitter), status updates, online forums and discussion boards, chats or groups (Google Groups, Reddit, Yahoo and Whirlpool), website link sharing, video conferencing, virtual worlds, location-based services, VOD and podcasting, geo-spatial tagging (Foursquare and Facebook CheckIn), and photo and video sharing (Flickr, Instagram, Snapchat, and Youtube).

### 4. PERSONAL ACCOUNTS TO BE DISTINCT FROM OFFICIAL ACCOUNTS

(a) Personal Accounts and Official Accounts should be distinct and maintained separately. Personal Accounts should not be used in an official capacity. The name, title, tag, or link of a Personal Account should not include language that would indicate that the Public Official or staff member is acting in any official capacity when posting on that account. Personal Accounts should not be created by using a City-provided email. A Personal Account that violates these provisions is at risk of being deemed an Official Account, regardless of when such Personal Account was established and for what purpose.

(b) Official Accounts should be established using the Public Official's City email account (*appointed officials don't always have City emails*) and maintained in a professional

manner. Where possible, Official Accounts should include language that indicates the title of the Public Official and should include a link back to City's website.

(c) Failure to comply with this Section may expose both the Public Official or staff member and the City to risks associated with First Amendment violations, Fair Campaign Practices Act violations, and Open Meetings Law violations.

## **5. LEGAL RISKS**

Most Social Media sites require users to agree to terms of service that include such provisions as indemnity and defense clauses and applicable law and venue clauses. When a public agency creates an account on a Social Media site, it typically must agree not to sue the site or allow the site to be included in suits against the agency, and requires the account owner to pay the site's legal costs arising from such suits. Most terms of service also assert that a certain state law applies to all legal actions (usually California). Because of these provisions, any Public Official or staff member violating the terms of service while using an Official Account exposes the City to significant legal risks. The provisions of this Policy are intended to protect the City from such risks, and thus compliance with both this Policy and the terms of service of the Social Media platform is mandatory. Board members and staff who are not prepared to comply with this Policy and the individual terms of service should not use Social Media.

## **6. MONITORING SPEECH AND ACCESS TO ACCOUNTS**

(a) Access to all Official Accounts must be set to "public." Because Official Accounts are public forums for First Amendment purposes, no member of the public may be banned from accessing an Official Account.

(b) Comments for a post may be turned on or off. If comments are turned on, no member of the public may be prohibited from submitting a comment. However, comments may be removed based on the following criteria if carried out in a viewpoint-neutral manner:

- i. Comments that are obscene, sexual in nature, or pornographic;
- ii. Comments that are defamatory or constitute harassment;
- iii. Comments that promote illegal activity; or
- iv. Comments that violate the intellectual property rights of the City or others.

Removed comments must comply with the standards for preservation of records under the Colorado Open Records Act.

(c) Alternatively, comments for a post may be turned off (to use Social Media as a one-way communication tool). Comments may only be turned off for the entire public and may not be turned off for individuals, including individuals whose comments are repeatedly subject to removal.

## **7. UNLAWFUL MEETINGS**

Of particular concern for use of Social Media is the risk of violating the Colorado Open Meetings Law. Under the Open Meetings Law, all public business must be conducted in public,

and a meeting of more than two Public Officials must be noticed and open to the public (and a meeting can be electronic means, including Social Media). The dynamic nature of Social Media and the sheer volume of posts may make it difficult to track who is involved in the discussion and detect when the line has been crossed. As such, Public Officials should not communicate in their official capacity with other Public Officials on Social Media by commenting or messaging, whether such communication is public or private. While informal communication with constituents is generally acceptable, lengthy discussion of public business in a such a manner is risky, especially if it involves other Public Officials.

## **8. CONFIDENTIALITY**

No Public Official or staff member may disclose on Social Media confidential or proprietary information acquired by way of his or her official position. This restriction applies whether the information is disclosed on Official Accounts or Personal Accounts.

## **9. COMMUNICATIONS ON PERSONAL ACCOUNTS**

If a Public Official discusses City business on a Personal Account, that Personal Account may be deemed an Official Account. Posts on Personal Accounts that include discriminatory remarks, harassment, threats of violence or similar inappropriate or unlawful conduct, and are intended to bully, disparage or harm the reputation of the City may subject the Public Official or City staff member to disciplinary action under this Policy.

## **10. PRESERVATION OF PUBLIC RECORDS**

Content published on Social Media that relates to the conduct of governmental actions must be retained and managed by the City in compliance with the Open Records Act. Public Officials and staff members should be prepared to treat each comment, post, photo, and list of individuals connected to a Social Media site as an open record. Absent exigent circumstances permitting removal, content on an Official Account may not be deleted. In any case, content shall not be deleted from an Official Account until a screen capture has been taken of the offensive content and preserved according to the records retention schedule. Content on Personal Accounts that relates to City business must be treated in a similar manner.

## **11. SECURITY OF OFFICIAL ACCOUNTS**

Public Officials and staff members should use necessary care to maintain the security and integrity of Official Accounts to prevent the unauthorized access or posting of content. Account passwords should be changed regularly and immediately after the password or Social Media site accessed using the password has been, or is suspected of being, compromised. Passwords should not be shared with any other individual or entity.

## **12. ENFORCEMENT**

Failure to follow this Policy exposes the City to significant legal risks. Therefore, the failure of a Public Official or staff member to follow this Policy may result in disciplinary action, including public censure or removal from the Board, as appropriate and permitted by law.

**13. DISTRIBUTION**

This Policy shall be distributed to all current Public Officials and staff members and any future Public Officials or staff members upon accepting such position.