

City Officials' Use of Electronic Communications and Social Media

Purpose Statement

The purpose of this policy is for the Livermore City Council to establish expectations, guidelines and requirements for all City Officials, as defined below, for using Electronic Communications and posting on Social Media Platforms.

This Policy is not intended to prohibit members of the City's Legislative Bodies (as defined below) from being responsive to the needs of the public and constituents, nor from communicating with City Staff.

The City Council expects that all City Officials will adhere to applicable laws and regulations when utilizing Electronic Communications and Social Media and will act with utmost caution and in accordance with the City Council's established values, norms, principles of governance and rules of procedure.

The City Council expects all City Officials to: (1) be fully responsible for their personal Electronic Communications and Social Media accounts as defined below, (2) adhere to this policy when maintaining and using such personal accounts, and (3) understand that online engagement can present challenges with Brown Act and due process compliance.

Applicability

This policy guides the use of Electronic Communications and Social Media by City Officials, as defined below. A separate Administrative Regulation, developed and approved by the City Manager, applies to all City of Livermore employees, consultants and contractors.

Definitions

City Official: City of Livermore Mayor and City Council Members, and Advisory Body Members (i.e. Board and Commission Members).

Legislative Body: For the purposes of this Policy, defined in accordance with the California State Brown Act to include the City of Livermore City Council as well as Boards and Commissions.

Electronic Communications: Communication via electronic means, such as electronic mail, text, voice message, online chat, communication through Social Media Platforms, etc.

Social Media Platform: An online or app-based service that is open and accessible to the public and where members of the general public have the ability to access and participate free of charge without pre-approval. This includes any forum and chatroom where the public cannot be blocked from participating, except when the Social Media Platform determines that an individual violated its rules or protocols. Examples of Social Media Platforms include, but are not limited to, blogs, video- and image-sharing websites or apps (e.g., YouTube, Instagram, TikTok, Snapchat), microblogging websites or apps (e.g., X), and others (e.g., Facebook, Nextdoor, Reddit, LinkedIn).

City Social Media Accounts: Official social media accounts, including mobile apps, which the City of Livermore establishes and maintains to share information on City-related business and events, and over which it has control over all postings, messages, comments, photos and videos, except for advertisements or hyperlinks by the Social Media Platform's owners, vendors, or partners. City Social Media Accounts should supplement, and not replace, the City's required notices and standard methods of communication.

City Officials' Personal Electronic Communications Accounts: Electronic Communications accounts (including Social Media accounts) belonging to and maintained independently by the City Officials.

Brown Act: The State of California Ralph M. Brown Act is a state law that guarantees the public's right to attend and participate in meetings of local Legislative Bodies. The act requires advance notice of meetings, with agendas that describe the business to be conducted.

Meetings subject to the Brown Act are not limited to face-to-face gatherings and include any means through which a majority of a Legislative Body discusses, deliberates or takes action on an item of business outside of a noticed meeting. The Brown Act applies to Social Media use and Electronic Communications.

AB 992: The State of California Assembly Bill (AB) 992 (2020) was enacted as a temporary modification to the Brown Act due to the legislature's belief that the Brown Act caused public officials to be overly cautious and restricted the free flow of communications between public officials and the public on internet-based Social Media Platforms.

While it would not be a Brown Act violation for two City Officials to talk about City business outside a noticed meeting, AB 992 added a new restriction that a City Official should not comment on another City Official's online comment on items that are within their Legislative Body's subject matter jurisdiction. The bill clarified that one City Official's online comments must be separate from any other City Officials' comments, and that City Officials cannot "talk" to each other, on matters within their Legislative Body's subject matter jurisdiction.

AB 992 encompasses activity across all types of Social Media Platforms. That means it could affect social media commenting, retweeting, liking, disliking, responding with positive or negative emojis and/or screenshotting (photographing) and reposting.

Guidelines and Requirements for the City Officials' Use of Electronic Communications and Social Media

General Guidelines

1. There is no California law requiring City Officials to use only government accounts to conduct public business, but there should be no expectation of privacy if personal accounts are used to conduct public business.
2. City Officials should be aware that Electronic and Social Media Communications regarding public business that are conducted using personal networks, accounts, or devices may be subject to the same laws as other records of public business, and that mishandling of such communications in violation of applicable laws may subject City Officials and the City to liability under applicable laws.
3. Electronic records relating to public business, including those created using City Officials' personal accounts, are required to be in a manner capable of maintaining the record for the applicable retention period, including through the use of highlights, bins, or archives for temporary and disappearing stories, reels, posts, or otherwise. Social media content should be treated the same as any written document and retained in accordance with the City retention schedules or the minimum two-year period required under California Government Code. City Officials can seek guidance on complying with this requirement from the City Manager and City Attorney.
4. Any misuse of social media and other communication devices by City Officials may unintentionally cause Brown Act law violations and/or create public records that would need to be disclosed.
5. The Brown Act prohibits decision makers from using a series of communications to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the City's Legislative Body outside a noticed meeting. For example, common email practices of forwarding or replying to messages can easily lead to a serial meeting (a series of communications outside a formal meeting) that are prohibited by the Brown Act. It is for this reason that City Officials should never use the "Reply All" function when responding to an email, as it increases the risk of creating a serial meeting in violation of the Brown Act.
6. To help avoid any violations of the Brown Act and to be consistent with the requirements of AB 992, City Officials are permitted to use their personal Social Media Platform to engage in

conversations or communications on matters within the subject matter jurisdiction of their Legislative Body: (a) to answer questions; (b) to provide information to the public, and (c) to solicit information from the public. However, a majority of members of the Legislative Body may not use social media to “discuss among themselves” official business. AB 992 broadly defines the meaning of “discuss among themselves” to include “communications made, posted, or shared on an internet-based Social Media Platform between members of a Legislative Body, including comments or use of digital icons that express reactions to communications made by other members of the Legislative Body.”

7. AB 992 prohibits a member of a Legislative Body from responding “directly to any communication on an internet-based Social Media Platform regarding a matter that is within the subject matter jurisdiction of the Legislative Body that is made, posted, or shared by any other member of the Legislative Body.” Therefore, if one City Official posts a comment in response to another City Official’s social media post about a City issue, that could be a violation of AB 992, assuming the two serve on the same Legislative Body. Similarly, replying to another City Official (or more than one) via electronic mail could be a violation of this law and the Brown Act, and should be avoided.
8. The City Council has established an expectation that City Officials will not utilize electronic devices to communicate with themselves, the public, or anyone else during a meeting of that City Official’s Legislative Body. Communicating during meetings using electronic technology (such as laptop computers, personal digital assistants, or cellular telephones) may create the perception that a private meeting is occurring without public access, which can introduce other legal concerns such as due process and whether those communications are influencing the outcome of decisions. If requested by a member of the public, these communications may need to be disclosed as public records.
9. The City Council has established an expectation that City Officials who have been issued an official City email address will use that address when communicating electronically about matters related to City business.

Engagement through City Officials’ Personal Electronic Communication Accounts

1. The City does not provide or support personal (not City’s official) Electronic Communications or Social Media accounts for City Officials, with the exception of City Council members who are issued official City electronic mail accounts. City Officials that maintain such personal accounts should be aware that Electronic Communications, Social Media posts, and messages by City Officials regarding matters that are before the City for action or within the City’s jurisdiction can be “official city business” subject to laws and policies regarding freedom of speech, Freedom of Information Act, and public transparency laws. These laws and policies include, but are not necessarily limited to, the California and United States Constitutions, the

California Public Records Act (CPRA), the Ralph M. Brown Act, the Political Reform Act and the City's records retention regulations.

2. City Officials are advised to maintain and clearly delineate between their own accounts used for official city business, versus personal or campaign purposes, when engaging in Electronic or Social Media communications, taking precaution not to convey personal or campaign communications in a manner that suggests such communications represent the position of the City, City Council, or Advisory Body as a whole. To avoid ambiguity, profile names on personal or campaign accounts should not be made in the name of the position to which the City Official was elected, should clearly reflect that content on such accounts does not represent the official positions of the City, City Council, or Advisory Body, and should not display the City logo or any other official City mark or title.
3. City Officials should include the following language on their social media accounts to avoid confusion and false expectation that their sites are affiliated with the City: "This page (site) is not operated or endorsed by the City of Livermore and does not reflect official City policies or positions."
4. Whenever possible, City Officials should refer others to the official City website for further information.
5. If a City Official receives Electronic Communication regarding City business on a personal account, they should copy that information to their official City account (if such exists) for transparency and ease of access for public records requests. Such communications received and/or made on personal accounts if related to City business, may also be subject to the same transparency laws described above.
6. When discussing City business matters, City Officials should avoid deleting comments or blocking individuals on the pages or sites they maintain. In the event that a City Official deletes or removes content or blocks a user for threatening, harassing, or discriminatory content that the City Official believes constitutes an imminent threat or violation of harassment or discrimination laws, a copy of the deleted or removed content should be saved or retained consistent with City records retention policies and this policy. Furthermore, a City Official should report this action to their departmental liaison (for advisory bodies) or the City Manager (for City Council).
7. A City business-related post sent by, or to the public from a City Official's personal computer or personal cell phone may fall within the definition of a public record and may be disclosed if requested under the CPRA.

Engagement through City Social Media Accounts

The City maintains a number of official City Social Media Accounts for the sole purpose of informing, educating and engaging constituents on matters of City business. City Officials may from time to time engage on such City Social Media Accounts by liking, commenting on or sharing official City posts. To maintain compliance with AB 992, City Officials should refrain from commenting on or responding directly to any communication that is made, posted, or shared by any other City Official on any item that is within their subject matter jurisdiction. This includes “liking”, “disliking”, adding emojis to, sharing or forwarding another City Official’s post or comment.

Engagement through Other Open Platforms

From time to time City Officials may engage on other open platforms such as commenting on an online news article. City Officials should take the same precautions as described earlier in this policy when engaging on such platforms.

Key Responsibilities:

City Manager: Responsible for facilitating the review of this policy with the Mayor and City Council every two years, after each municipal election, and incorporating relevant sections of this policy into the City’s Administrative Regulations on the same subject applicable to City staff, consultants and contractors. In collaboration with the City Attorney, the City Manager is responsible for implementing biennial training on the policy for all City Officials.

City Attorney: Responsible for reviewing this policy for compliance with and conformance to applicable laws and regulations and recommending changes to the City Manager during the biennial review process outlined above.

City Officials: Responsible for satisfying the administrative and legal responsibilities related to their use of and engagement through Electronic Communications and Social Media accounts. Responsible for reporting incidents of potential harassment, comment deletion or blocking, or unintentional policy violation to the City Manager.

Consequences of Policy Violation:

Violations of this policy by City Officials may be subject to removal from official positions (for advisory bodies), removal from representing the City on intergovernmental agencies (for Mayor and City Council), and/or up to and including censure (for Mayor and City Council).

Acknowledgement Form

I acknowledge that I have received a copy of the City of Livermore's City Council Policy on Use of Electronic Communications and Social Media and understand that I am to read and comply with its contents. I am aware that failure to comply may lead to consequences stated in the Policy.

City Official Name: _____

City Official Title: _____

Date: _____

Signature: _____