City of Long Beach
Working Together to Serve

Office of the City Attorney

Memorandum

DATE: December 10, 2020

TO: Honorable Mayor and Members of the City Council

FROM: Amy R. Webber, Deputy City Attorney

SUBJECT: Social Media and the Brown Act -- New Law AB 992

Effective January 1, 2021, under new Assembly Bill 992, even giving a "thumbs up" to another official's social media post on a topic within the legislative body's subject matter jurisdiction could violate the law. AB 992, which amends the Brown Act, clarifies what kind of communications a public official may have via social media and what kind of communications are prohibited.

The Brown Act generally requires that a legislative body's meetings be open and public, including advance notice, posting of the agenda and accessibility by the public. The Act prohibits a majority of members of a legislative body from engaging in a "series of communications, directly or through intermediaries, to "discuss, deliberate, or take action on an item" that is within the legislative body's subject matter jurisdiction.

First, AB 992 allows a public official to communicate on social media platforms to answer questions, provide information to the public or to solicit information from the public regarding a matter within the legislative body's subject matter jurisdiction. However, these kinds of communications are only allowed as long as a majority of the members of the legislative body do not use any social media platform to "discuss among themselves" official business. According to AB 992, "discuss among themselves" includes making posts, commenting and even using digital icons that express reactions to communications (i.e., emojis) made by other members of the legislative body.

Second, 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." Now, if one public official posted a comment in response to another public official's social media post about a City issue, that could be a Brown Act violation, assuming the two serve on the same legislative body.

The law applies to Internet-based social media platforms that are open and accessible to the public. "Open and accessible to the public" means "that members of the general public have the ability to access and participate, free of charge, in the social media platform

without the approval by the social media platform or a person or entity other than the social media platform, including any forum and chatroom, and cannot be blocked from doing so, except when the Internet-based social media platform determines that an individual violated its protocols or rules."

AB 992 applies to many social media platforms, including, but not limited to, Snapchat, Instagram, Facebook, Twitter, blogs, TikTok and Reddit. That means it could affect social media commenting, retweeting, liking, disliking, responding with positive or negative emojis and/or screenshotting (photographing) and reposting.

If you have questions regarding this issue, please contact our office.

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cc: Charles Parkin, City Attorney
Thomas B. Modica, City Manager
Monique DeLaGarza, City Clerk