City of Long Beach
Working Together to Serve

Office of the City Attorney

Memorandum

DATE: March 27, 2024

TO: Honorable Mayor and Members of the City Council

FROM: Taylor M. Anderson, Deputy City Attorney

SUBJECT: Government Officials Blocking the Public and Deleting Comments on Social Media

This memorandum is to provide recommendations on how to conduct yourselves on social media considering recent United States Supreme Court (Supreme Court) decisions regarding the ability of public officials to block and delete comments of critics on their social media accounts.

The Supreme Court recently laid out a new test to determine under what circumstances government officials violate the free speech rights of members of the public by removing comments or blocking access on their social media accounts. The key question is whether the official has authority to speak for the government and whether the official appears to use that authority when posting on social media OR the official's social media account is a place where the public official is speaking as a private resident.

Examples of details that courts will use to determine whether the First Amendment applies include, but is not limited to: whether an account uses government resources (e.g., City staff and City computers); whether the account is labeled as "personal" or "official"; whether the account is controlled by the government and passed down between office holders; and whether the public official's speech was used in furtherance of their official responsibilities.

Public officials that use their personal social media account to post personal content and for City business risk that their personal social media account may be subject to the First Amendment, which prevents blocking the public and limits when posts may be deleted. Considering the Supreme Court's decisions, our office recommends the following:

- **Keep your campaign, personal, and office social media accounts separate and clearly labeled.** The court will look to labels as an indicator for what the account is used for but labelling your accounts will not absolve you of liability for deleting comments or blocking people on your personal accounts if you also use personal accounts for City business. Examples of labels include:
  - "This is the campaign account of [your name]".
  - "This is the personal account of [your name]. The views on this account are strictly my own".
  - "This is the official account of the 10th District Councilmember [your name]".

- **Keep content specific to each type of social media account.** This means:
  - Campaign posts go on your campaign account.
  - Personal posts go on your personal account.
  - Posts about City business go on your office account.
  - Don't post campaign content on your office or personal social media accounts.
  - Don't post about City business on your personal or campaign social media accounts.
- **Consult with the City Attorney's Office and the City Manager's Public Affairs Office before deleting comments on your office social media account to ensure compliance with the Social Media Policy.**
- **DO NOT block anyone from accessing your page or content on your office social media account.** If you have blocked anyone from accessing content on your office social media account previously, our office recommends that you unblock them as soon as possible to avoid any possible liability.
- **You may block commenters on your purely personal social media account if you do not use your personal social media account to post about City business.**

This memorandum also serves as a reminder that other laws may be implicated by using social media for City business. For example, reacting to another official's social media post on a topic within the legislative body's subject matter jurisdiction could violate the Brown Act, as discussed in this memorandum from our office. Further, content on social media regarding City business is subject to the Public Records and may be subject to release in response to a records request.

Please do not hesitate to contact our office if you have any questions.

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