



**CITY OF FILLMORE**  
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TO: MAYOR AND CITY COUNCIL

FROM: Tiffany J. Israel, City Attorney

DATE: August 10, 2021

RE: **CONSIDERATION OF ADOPTION OF A POLICY REGARDING THE PRIVATE USE OF SOCIAL MEDIA BY INDIVIDUAL MEMBERS OF CITY BROWN ACT BODIES (CITY COUNCIL AND COMMISSIONS)**

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### **REQUEST**

Staff is requesting that the City Council approve Resolution No. 21-3839 adopting a Policy for Social Media Communications by City Council members and Commissioners.

### **DISCUSSION**

Social media has become an integral channel of communication for individual members of the City Council with members of the public and may eventually be used by members of City Commissions in a similar fashion. Having a social media presence provides public officials with the ability to make information more accessible by sharing information and connecting with their constituents at the convenience of the constituents. This has been demonstrated by the increase in social media usage by members of legislative bodies in recent years, and especially during the COVID-19 pandemic, to engage with and communicate with their constituents.

However, such communications must be balanced against legal obligations with respect to transparency in the conduct of the people's business. Elected and appointed officials also need to be mindful of the public's perceptions of their transparency and compliance with disclosure and other laws.

The Brown Act, California Government Code 54950 *et seq.*, prohibits, outside of an open and public meeting, 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, Gov. Code §54952.2(b)(1).

This rule has long been in place but the recent use of social media by elected officials created new challenges in interpreting and applying these requirements. As a result, Assembly Bill 992 (“AB 992”), effective January 1, 2021, amended Government Code section 54952.2 to impose limits on the authority of members of a legislative body to use social media to communicate with the public.

With the effectiveness of AB 992, “discuss among themselves” is now defined broadly to include “comments or use of digital icons that express reactions to communications,” as well as any communications posted or shared on a social media platform between members of the legislative body. Gov. Code, §54952.2(b)(B)(i.) Therefore, a majority of the members of a legislative body may not respond to the same communication on social media, including through the use of emojis, the “like” button on Facebook or Instagram, and/or retweeting on Twitter.

Additionally, AB 992 now limits “direct” communications via social media between individual members of a legislative body regarding a matter within the legislative body’s subject matter jurisdiction. Specifically, members *may not* directly respond to a social media communication made, posted, or shared by any other member of the same legislative body. Previously, the Brown Act did not prohibit such communications, as long as they did not involve a majority of the members of a legislative body.

Staff prepared a memorandum with sample policy guidelines in light of AB 992 for the City Council. At the July 13, 2021 City Council meeting, staff was directed to prepare a policy for the to consider that is slightly more restrictive than AB 992, to help ensure that the social media posts of elected and appointed officials do not and are not perceived to violate AB 992.

The attached policy provides specific guidelines regarding the private use of social media by individual members of the City Council and other City Brown Act bodies for social media communications by City Council members and Commissioners consistent with state law.

The key components of the attached policy include:

- A reminder that social media posts may be subject to the Public Records Act
- A brief discussion of the First Amendment and public forums
- A summary of applicable sections of the Brown Act
- What a City Official may and may not do on a social media platform
- Consequences for the failure to abide by the policy

Taking a conservative and simple approach in light of AB 992, the draft policy recommends that elected officials not respond to or comment on social media posts about city business that another member of their Brown Act body has made, commented on, or responded to.

## **FISCAL IMPACT**

None

## **RECOMMENDATION**

Staff recommends that the City Council approve Resolution No. 21-3839 adopting a Policy for Social Media Communications by City Council and Commissioners.

## **ALTERNATIVES**

1. Provide additional direction to staff.
2. Do not adopt policy.

## **ATTACHMENT**

Resolution No. 21-3839

**RESOLUTION 21-3839**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FILLMORE  
ADOPTING A POLICY REGARDING THE PRIVATE USE OF SOCIAL MEDIA BY  
INDIVIDUAL MEMBERS OF CITY BROWN ACT BODIES (CITY COUNCIL AND  
COMMISSIONS)**

**WHEREAS**, the City of Fillmore (“City”) recognizes the value in using social media as a means of conveying information to members of the public; and

**WHEREAS**, the City recognizes that social media has become an integral channel of communication for individual members of the City’s City Council with members of the public. However, such communications must be balanced against legal obligations with respect to transparency in the conduct of the people’s business; and

**WHEREAS**, the City encourages the use of social media to further the goals of the City Council and City Commissions, where appropriate, through dissemination of information about the City’s mission, meetings, activities and current issues to members of the public; and

**WHEREAS**, the Brown Act California Government Code 54950 *et seq.*, prohibits, outside of an open and public meeting, 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, Gov. Code §54952.2(b)(1); and

**WHEREAS**, Assembly Bill 992 (“AB 992”), effective January 1, 2021, amended Government Code section 54952.2 to clarify how public officials may lawfully communicate on internet-based social media platforms; and

**WHEREAS**, the City Council wishes to establish a policy providing specific guidelines regarding the private use of social media by individual members of the City Council and other City Brown Act bodies for social media communications by City Council members and Commissioners consistent with state law.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FILLMORE,  
CALIFORNIA DOES HEREBY RESOLVE AS FOLLOWS:**

**Section 1.** The recitals above are true and correct and incorporated herein by this reference.

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**Section 2.** The Policy for Social Media Communications by City Council and Commissioners, attached as Exhibit A, is hereby approved.

**PASSED, APPROVED AND ADOPTED** this 11th day of August, 2021.

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Mark Austin, Mayor

ATTEST:

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Erika Herrera, Deputy City Clerk

APPROVED AS TO FORM:

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Tiffany J. Israel, City Attorney

CITY OF FILLMORE        )

COUNTY OF VENTURA    )§

STATE OF CALIFORNIA   )

I, Erika Herrera, Deputy City Clerk of the City of Fillmore, California, do hereby certify that the foregoing Resolution No. 21-3839 was duly passed and adopted by the City Council of the City of Fillmore at the regular meeting thereof, held on the 11th day of August, 2021, and was signed by the Mayor of the said City, and that the same was passed and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Erika Herrera, Deputy City Clerk



## City of Fillmore

### **POLICY FOR SOCIAL MEDIA COMMUNICATIONS BY CITY COUNCIL MEMBERS AND COMMISSIONERS**

#### **Background and Purpose**

The City Council, as the legislative body of the City of Fillmore, hereby adopts the following policy regarding the private use of social media by individual members of the City Council and City Commissions. This policy is adopted, in part, as a result of the recent adoption of California Assembly Bill No. 992, which limits the authority of members of a legislative body to use social media to communicate with the public.

The City of Fillmore recognizes that social media has become an integral channel of communication for individual members of the City Council with members of the public and may eventually be used by members of City Commissions in a similar fashion. Such communications must be balanced against legal obligations with respect to transparency in the conduct of the people's business. For example, the Brown Act requires that legislative bodies of public agencies deliberate and take action openly. (Gov. Code §§ 54950 et seq.). Moreover, communications regarding City business on private accounts may be subject to disclosure under the Public Records Act. (Gov. Code §§ 6250 et seq.) Further, elected and appointed officials need to be mindful of the public's perceptions. To that end, the following protocol will be followed by members of the City Council and Commissions.

#### **Definitions**

For purposes of this policy, the following definitions apply:

“City” means the City of Fillmore.

“City official” means any elected or appointed City Councilmember, Commissioner, or other person serving on a body on behalf of the City that is subject to the Brown Act.

“City business” means information relating to the conduct of the public's business or communications concerning matters within the subject matter of the City's jurisdiction, including, but not limited to, pending or potential City projects, past or prospective City agenda items, or City budgets or expenditures involving City funds.

“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 of 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. Examples of social media platforms include Snapchat, Instagram, Facebook, Twitter, blogs, TikTok and Reddit.

“Social media platform” means an online service that is “open and accessible to the public.”

## **Policy/Protocols**

1. **Public Records Act:** City officials are advised that their posts, comments, and responses about City business on social media platforms, whether on public or private pages, may be subject to disclosure under the Public Records Act.

2. **First Amendment:** City officials should also be aware that their private social media accounts may be transformed into public forums where members of the public may have First Amendment rights if they are used to discuss City business. In determining whether a private social media page has become a public forum, courts have examined factors including:

A. How the City official is referenced on the site (i.e., is he or she referenced as “Mayor” or “Chair”, or simply “Jane Doe?”);

B. How the page is titled (i.e., is the account registered as a governmental account or a private account?);

C. How the City official “invites” users to use the page (i.e., in cases in which the account was deemed a public one, the public official solicited the public’s opinion on City matters);

D. Whether the City official is “transacting” City matters on the site (i.e., posting about matters before the City);

E. Whether City employees help maintain and operate the site; and

F. Whether the public official uses the site to engage directly with the public (i.e., replying to constituent comments regarding City business). Whether an account is private or public is fact-specific and depends on the totality of the circumstances. If there are reasons to believe that an City official’s private social media page has turned into a public forum, City officials should refrain from blocking members of the public from the page or deleting comments with which they disagree.

3. **Brown Act:** City officials may engage in separate<sup>1</sup> conversations or communicate on social media platforms to answer questions, provide information to the public, or solicit information from the public regarding City business.

4. A City official **may not** do any of the following on a social media platform:

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<sup>1</sup> Separate from other members of the governmental body that the official is a part of.

A. Discuss City business, including any matter that may come before the Council or Commission, as applicable, including communicating, posting, sharing, commenting, or using digital icons (i.e., a thumbs up or an emoji) on a post of another Council/Commission member or a post that another Council/Commission member has shared or commented on with words or digital icons;

B. Respond directly or react to another Council/Commission member's communication, comment or post if the topic concerns a matter that may come before the City Council or Commission that the person is a member of; and

C. When matters are or may be pending before the City Council/Commission, members must refrain from sharing viewpoints or facts on social media that have not already been shared at a meeting and in particular prior to a decision to be made by the Council/Commission.

5. Failure of a City official to abide by this policy, following its adoption, may result in one or more of the following:

- No action if the violation was inadvertent and rare,
- Censure (for both appointed and elected officials); or
- Removal from office (for appointed officials only).