



ADMINISTRATIVE POLICY

Number: I-18
Issued: June 27, 2019
Jurisdiction: City Council

ELECTED/APPOINTED OFFICIALS & SOCIAL MEDIA

I. PURPOSE

The purpose of this policy is to provide guidance for the appropriate use of social media by elected and appointed City of Capitola officials, and members of City committees subject to the Brown Act. The policy will also outline the proper response if elected/appointed officials and Brown Act committee members use social media inconsistently with this policy.

The First Amendment of the United States' Constitution defines every citizens' freedom of religion, speech, press, assembly, and petition. Under this amendment, the exercise of free speech, including on social media outlets, is protected. All Capitola Officials are entitled to this right, and this policy does not revoke it.

II. DEFINITIONS

- A. Social Media: an online forum or communication tool that enables individuals to create online communities to share information, messages, images and other content.
- B. Quasi-Judicial/Administrative Decisions: "occurs when a) a hearing is held to apply a rule or standard to an individual person, project or circumstance; c) it involves the taking of evidence; d) it results in the rendering of a written decision issued by the hearing officer or tribunal (including adoption of findings); and e) the written decision is based on the facts and arguments submitted at the hearing". These types of hearings affect individual properties or parties.
 - 1. *Examples*: Planning Commission decisions on project applications
- C. Legislative Decisions: Actions include "adoption and amendments to municipal codes, general plans, zoning codes, and personnel regulations". These types of hearings establish public policy and rules that apply to groups of property or people.
 - 1. *Examples*: Zoning Code updates, Ordinance adoption, changes in policy, approval of the budget, etc.
- D. Ex-Parte Communication: any material or substantive oral or written communication with a decisionmaker that is relevant to the merits of an adjudicatory proceeding, and which takes place outside of a noticed proceeding open to all parties to the matter (Gov. Code 11430.10)

III. SOCIAL MEDIA USE

Utilizing social media outlets can be useful for elected/appointed officials to engage with the public and present City information. For the purposes of this policy, a social media post includes the creation of any content; either new or linked to another's, on all social media

platforms. This includes and is not limited to; information posted on your own social media account in picture or text form, commenting on other posts, re-posting or sharing content by other social media users, liking other's posts, etc. Regardless of username, elected and appointed officials are accountable for their online behavior. Social Media Accounts under private names or dissociated from the City could still come under scrutiny if they are run by an elected or appointed official. For example, Facebook accounts with usernames "Jane Doe" and "Mayor Jane Doe" should both be managed in accordance with this policy. This policy will outline the best practices that should be considered so that all Officials use social media expression in positive ways and avoid potential liability for the City or themselves.

IV. BEST PRACTICES WHEN POSTING ON SOCIAL MEDIA

The chart below (section VII) is designed for easy reference to demonstrate the different levels of appropriate and inappropriate social media engagement. Consequences of writing and posting certain types of content are simply stated in the second row, so that Officials understand their responsibilities after engaging in such types of social media engagement. As an elected or appointed official, you will be called upon to render decisions that affect the City of Capitola, and it is important to remain mindful of how online communication regarding these decisions will be perceived. Because the type of decisions (quasi-judicial vs. legislative) varies, their content type should be considered when posting about them on social media.

- A. Keep it Neutral: Use caution when expressing yourself online. This is a permanent, public record that may preserve your thoughts on a subject that ends up coming in front of the City for a decision. Neutrality can be the easiest way to avoid later recusal and preserve your reputation as an impartial, unbiased decision maker.
- B. Keep it Equal: Treat City Business in a similar way online. This is another way to preserve your neutrality for future decisions.

V. ISSUES WHEN POSTING ON SOCIAL MEDIA

Particularly when related to quasi-judicial decisions, social media content posted by elected or appointed officials can be problematic. Online conversation can also easily lead to Brown Act Violations.

- A. Showing Bias on Quasi-Judicial Hearings: Elected and appointed officials are obligated to remain neutral and unbiased regarding quasi-judicial matters prior to their vote on the matter. Officials should use caution when expressing themselves, in all types of communication including on social media outlets, to remain unbiased.
- B. Using Social Media to Gauge Public Opinion: Communicating online about specific upcoming City decisions may result in valuable resources such as public opinion and community input, which then is left out the public record unless action is taken to disclose it. Purposefully gathering information on quasi-judicial decisions prior to their respective public hearings negates the inherent neutrality of a public hearing; where all information is heard at one time and decisions are made based upon the facts and opinions presented in that public forum.
- C. Conversing with Other Officials Online: The Brown Act dictates much of elected and appointed officials' behavior both during and outside of public meetings. Online conversation between multiple elected and appointed officials should not relate to quasi-judicial matters.

1. *Ralph M. Brown Act & Serial Meetings*: The general point of this California State Law is that “California legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." A serial meeting, expressly prohibited by the Brown Act, is when multiple members of Council or Committee engage in conversation regarding a quasi-judicial matter outside of a duly noticed public meeting. Serial Meetings can occur between elected or appointed officials when two or more comment, post, or engage in online conversation regarding City business. This type of social media use will put officials in violation of the Brown Act.

VI. TYPES OF SOCIAL MEDIA POSTS

	<u>Acceptable</u>	<u>Potentially Acceptable</u>	<u>Discouraged</u>	<u>Against Policy</u>
Action	<ul style="list-style-type: none"> • Sharing City-created social media posts • Sharing content regarding legislative proceedings, City policy, budget and events • Posting self-created content regarding legislative proceedings, City policy, budget and events 	<ul style="list-style-type: none"> • Sharing or posting content regarding quasi-judicial City matters in a consistent fashion. 	<ul style="list-style-type: none"> • Treating individual quasi-judicial matters differently. For example, only sharing content related to selected development projects and not others. 	<ul style="list-style-type: none"> • Expressing personal opinions on quasi-judicial matters, prior to voting • Violations of the Brown Act
Remedy	<ul style="list-style-type: none"> • No additional action 	<ul style="list-style-type: none"> • Ex-parte Communications must be submitted to the City for inclusion in the record 	<ul style="list-style-type: none"> • Ex-parte Communications must be submitted to the City for inclusion in the record • Official may need to recuse from voting 	<ul style="list-style-type: none"> • Ex-parte Communications must be submitted to the City for inclusion in the record • Official must recuse from voting