



The public is invited to attend the meeting virtually by using the ZOOM Meeting access information below -

Please click the link below to join the webinar:

<https://sumnerwa-gov.zoom.us/j/81793945258>

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US: +12532158782,,81793945258# or +13462487799,,81793945258#

Or Telephone:

Dial 1 253 215 8782

Webinar ID: 817 9394 5258

CALL TO ORDER

Roll Call: Bitetto, Brown, Cole, Hochstatter, Neuman, Reed and Stuard

SPECIAL STUDY SESSION BUSINESS

1. Public Records Act and Open Public Meetings Act Council Training

ADJOURNMENT

This meeting is accessible to persons with disabilities. For individuals who may require special accommodations, please contact the City Clerk at (253) 299-5590, 24 hours in advance.

SUBJECT: Public Records Act and Open Public Meetings Act Council Training

CATEGORY: Presentation

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Elected Official Social Media Policy
2. PRA OPMA Training 3.21.2022

STAFF CONTACT: Andrea Marquez, City Attorney, Maili Barber, Deputy City Attorney

SUMMARY BACKGROUND:

Tonight, legal staff will be presenting to Council re: the Public Records Act and the Open Public Meetings Act. The presentation will include helpful reminders, discussions about relevant laws and court rulings, and will include a question/answer session.

COUNCIL COMMITTEE/STUDY SESSION: MEETING/STUDY SESSION DATE: 3/21/2022 COMMITTEE RECOMMENDATION:
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STAFF RECOMMENDATIONS/MOTION:

Presentation only.

**RESOLUTION NO. 1491
CITY OF SUMNER, WASHINGTON**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, ADOPTING THE
ELECTED OFFICIAL SOCIAL MEDIA POLICY.**

WHEREAS, the City of Sumner Elected Officials desire to utilize social media to engage and interact with the public; and

WHEREAS, the use of social media by elected officials may be considered a public record subject to retention and disclosure; and

WHEREAS, the council desires to adopt policies regarding the use, regulation, retention and disclosure of social media platforms utilized by elected officials.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, AS FOLLOWS:

Section 1. Adoption. That the Sumner City Council adopts the Elected Official Social Media Policy, attached hereto as Exhibit A and adopted by reference.

Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this resolution, including but not limited to the correction of clerical errors; or references to other local, state, or federal laws, codes, rules, or regulations.

Section 3. Effective Date. This resolution shall become effective immediately upon adoption.

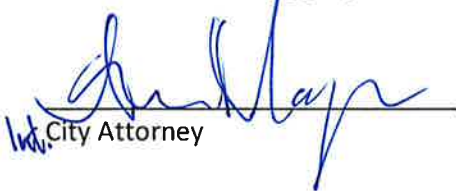
ADOPTED AND APPROVED this 7 day of May. 2018.


Mayor William L. Pugh

ATTEST:


Michelle Converse, CMC

APPROVED AS TO FORM:


City Attorney

CITY OF SUMNER
ELECTED OFFICIAL SOCIAL MEDIA POLICY
RESOLUTION No. 1491, Exhibit A
April 16, 2018

1.0 PURPOSE

Social media provides the ability for Elected Officials (Mayor and Councilmembers) to communicate with their constituents and members of the public regarding subjects that are directly related to the City of Sumner and the Sumner community.

This policy outlines the roles, responsibilities, and best practice recommendations for the use of social media by Elected Officials in their official capacity. The City's Elected Officials are committed to open and progressive communications between themselves and their constituents utilizing available and future online technologies within the limits of the law.

2.0 REFERENCES

RCW 42.17A.555	Use of public office or agency facilities in campaigns - Prohibition - Exceptions
Ch. 42.23 RCW	Code of Ethics for Municipal Officers – Contracts Interests
Ch. 42.30 RCW	Open Public Meetings Act
Ch. 42.36 RCW	Appearance of Fairness Doctrine - Limitations
Ch. 42.56 RCW	Public Records Act
Sumner City Council Rules of Procedure	

3.0 DEFINITIONS

“Chat” is a feature that allows instant/direct messages to be sent between users of the social media platform.

"Comment" is a response to a post, an article or other social media content submitted by a visitor.

“Elected Officials" includes Mayor, Councilmembers, and any staff working on an Elected Official's behalf to represent him or her, using a social media tool.

“Follower/Friend” is an individual or organization that has established a link between their personal or professional site and the Elected Official's social media site.

“Like” is a feature that allows users to show their support for a specific comments, pictures, wall posts, statuses, or fan pages. The “Like” button—and its associated emotions such as “Sad,” “Love,” etc.—allows users to show their response to content without having to make a written comment.

“Post” is an original entry onto a social media site by the user of the site.

“Sharing” is to relay a previously created post onto a different social media site or one’s own personal newsfeed.

“Social Media” are third-party hosted online technologies that facilitate social interactions and dialogue. These online technologies are operated by non-city hosted services and may be used by the Elected Officials to communicate with the public. Such third-party hosted services/tools may include, but are not limited to social networking sites (Facebook, LinkedIn), micro-blogging tools (Twitter, Instagram, Snapchat), audiovisual networking sites (YouTube, Flickr), and blogs, etc.

“City owned/maintained social media platform(s)” are social media platforms that are approved by the City’s Administrative Services and Communications Director to be utilized by Elected Officials in their official capacity.

“Personally owned/maintained social media platform(s)” are social media platforms that are personal accounts utilized by Elected Officials in their personal capacity.

“Tagging” is a mechanism of linking a person, page or place to a post.

“Visitor” is a person who views an Elected Official’s social media site.

4.0 POLICY

This policy applies to any social media platforms used by Elected Officials in their official capacity to communicate with constituents or the general public.

Where indicated, certain provisions of this policy shall apply only to social media platform(s) that are owned or maintained by the City of Sumner, including platform(s) that are established by the City for Elected Officials. It is primarily each Elected Official's responsibility to ensure compliance with this policy.

IT IS THE CITY'S PREFERENCE AND INTENT THAT ELECTED OFFICIALS WILL NOT UTILIZE SOCIAL MEDIA TO COMMUNICATE IN THEIR OFFICIAL CAPACITY EXCEPT THROUGH SOCIAL MEDIA PLATFORMS THAT ARE OWNED OR MAINTAINED BY THE CITY OF SUMNER. **THE USE OF PERSONALLY OWNED SOCIAL MEDIA PLATFORMS FOR THIS PURPOSE IS STRONGLY DISCOURAGED.** IF AN ELECTED OFFICIAL STILL CHOOSES TO CONTINUE DISCUSSING CITY MATTERS ON PERSONAL PLATFORMS, THE CITY MAY DEEM THE PLATFORM AN OFFICIAL PLATFORM, SUBJECT TO THIS POLICY.

4.1 SOCIAL MEDIA PLATFORM APPROVAL

Social media platforms are continually evolving. The City must evaluate the use of proposed new platforms based on the following criteria:

- Ability of the proposed platform to meet state records retention laws
- Ability to meet public disclosure laws
- Ability to further the City's purpose of conveying information successfully to a significant audience
- Ability to monitor and maintain, not just open, an account

The Administrative Services and Communications Director will jointly evaluate the proposed new platform to determine if it will be allowed for use.

The Administrative Services Director, following consultation with the City Administrator, may cause categories of city owned/maintained social media platforms to be permanently or temporarily discontinued if they are not or cannot be used in compliance with this policy. The Administrative Services Director shall exercise such discretion in a viewpoint-neutral, evenhanded, and non-arbitrary manner.

5.0 ADMINISTRATION, ENFORCEMENT AND DISPUTE RESOLUTION

The City's Administrative Services Director shall have primary responsibility to administer and enforce the provisions of this policy with respect to social media platforms that are owned or maintained by the City of Sumner.

Any Elected Official aggrieved by an administrative decision or enforcement action of the Administrative Services Director under this policy may appeal such decision or action to the City Hearing Examiner by filing a written statement with the City Clerk within five (5) business days

of the decision or action. The written statement shall set forth all relevant facts and any supporting legal argument. The Administrative Services Director may thereafter file with the City Clerk a written response within five (5) business days. The appealing elected official shall thereafter have two (2) business days in which to file a written reply with the City Clerk. The Hearing Examiner shall consider all such submittals without a hearing and shall issue a written decision denying or sustaining the appeal within ten (10) business days following the reply. There shall be no further right of administrative appeal.

6.0 RECORDS RETENTION ACT COMPLIANCE

State and local records retention laws and schedules apply to social media content. All social media content that is required to be retained shall be maintained for the legally required retention period based on the subject matter of the content.

As with any correspondence sent in his or her capacity as an Elected Official, Elected Official postings to social media generally need to be retained. Social media platforms owned/maintained by the City of Sumner will be retained through the City's archiving system. Retention of social media activity not occurring on a City owned/maintained social media platform is the ultimate responsibility of each Elected Official. Elected Officials should consult with the Administrative Services Director and City Clerk for the applicable retention schedule and method.

7.0 PUBLIC RECORDS ACT COMPLIANCE

Content maintained in a social media format, i.e., Facebook, YouTube, Twitter, etc., that is related to City business, including communication between an individual, an Elected Official and constituents or the general public, original posts, reposts, comments and a site's listing of "friends" or "followers," may be considered a public record subject to disclosure under the state Public Records Act.

Any social media tools should clearly state if possible, that all content submitted by members of the public is potentially subject to public disclosure pursuant to the Public Records Act, RCW 42.56. When possible a hyperlink to the City's current social media policy should be included in the page description. If the platform limits such messaging to be permanently displayed, the account's manager, including an Elected Official, should periodically post such information.

Under the state Public Records Act, the City and its Elected Officials are potentially responsible for responding accurately and completely to any public records request, including a request for

public records on a personally owned/maintained social media account of an individual Elected Official. If an Elected Official is utilizing a personally owned/maintained social media account for city business, the Elected Official is solely responsible for ensuring compliance with the applicable retention standards.

If an Elected Official receives a request for public records, social media or otherwise, the requester shall be referred to the City Clerk or City Website to make a formal request. The Elected Official shall also notify the City Clerk, and if possible, provide a copy of the request to the City Clerk for follow-up.

8.0 OPEN PUBLIC MEETINGS ACT AND APPEARANCE OF FAIRNESS DOCTRINE COMPLIANCE

Communication between Councilmembers via social media, as with telephone and email, may potentially constitute a "meeting" under the Open Public Meetings Act, Chapter 42.30 RCW. For this reason, Councilmembers are prohibited from participating in social media discussions/threads regarding City business that involve a quorum of Council Members, and are strongly discouraged from "friending" other Councilmembers or "liking" other Councilmember's posts.

In addition, receiving or making posts or comments regarding quasi-judicial matters via social media may violate Council Rules and Chapter 42.36 RCW – the Appearance of Fairness Doctrine. To avoid receiving any comments on pending quasi-judicial matters that may violate the Appearance of Fairness Doctrine, **Councilmembers are strongly encouraged to not post or comment on items that are subject to a public hearing or council hearing.**

9.0 CONTENT GUIDELINES

While social media, with its use of popular abbreviations and shorthand, does not adhere to standard conventions of correspondence, the content and tenor of online conversations, discussions, and information posts and comments should model the same professional behavior displayed during Council meetings and community meetings.

Social media is not to be used by Elected Officials as a mechanism for conducting official city business other than to informally communicate with the public. Examples of business that may not be conducted through social media include making policy decisions, official public noticing, accepting/soliciting public input for matters in which a formal public hearing is being held and discussing confidential City matters that have not been approved for release to the public.

Elected Officials' social media site(s) should contain links directing users back to the City's official website for in-depth information, facts, forms, documents, or online services necessary to conduct official city business. In the event of an emergency/pending emergency or police situation, the City follows the National Incident Management System, which means all communication regarding the situation comes from one unified public information officer (PIO). Especially in such situations, Elected Officials will want to repost information from the City's PIO and convey concerns/questions back to the incident's Joint Information Center. Officials will want to refrain from conjecture, speculation or personal comments that could lead to misinformation that endangers citizens.

All content posted on city owned/maintained Elected Officials' social media platforms shall comply with applicable Council Rules of Procedures, City ordinances and administrative rules, and Washington State law regulating public agencies and elected officials. This includes City Council rules regarding council representation.

For social media platforms that are owned or maintained by the City of Sumner, no content may advertise commercial services, entities, or products.

Elected Officials will not post or release proprietary, confidential, or sensitive information on social media sites in a manner that violates applicable state law, including, without limitation, RCW 42.23.070 – Prohibited Acts.

9.1 Considerations for Personal Social Media Platforms

Elected Officials are members of the community. Friends, neighbors and coworkers will inevitably post city-related items to the Elected Official's personal social media platform. To meet state law regarding public records retention and disclosure, Elected Officials shall use the guidelines in the appendix to capture and redirect posts.

9.2 Handling Prohibited/Offensive Content

For social media platforms that are owned or maintained by the City of Sumner, users and visitors of social media sites who submit comments are subject to the City's current social media policy regarding prohibited content. When possible, a hyperlink to the City's current social media policy should be included in the page description. In general Elected Officials should not delete or block a commenter who simply disagrees with, or is critical of, the official or the city. If an Elected Official has questions regarding the

applicability of the policy, they can contact the Administrative Services or Communications Director.

9.3 Lobbying / Campaigning Activities

Utilizing social media for lobbying activities is subject to RCW 42.17A. Elected Officials are prohibited from utilizing city owned/maintained social media platforms for grassroots lobbying. Further guidance can be obtained from the Administrative Services or Communications Director.

Social media platforms that are owned or maintained by the City of Sumner shall not contain posts, comments, or links to any content that supports or opposes political candidates or ballot propositions, including, without limitation, links to an Elected Official's campaign site or the campaign site for an individual running for any level of elected office, RCW 42.17A.555. Elected Officials may post content in support or opposition to any ballot proposition in response to a specific inquiry.

9.4 Section 508 Accessibility Rights

In accordance with the Federal Rehabilitation Act, government entities which receive Federal funding are generally required to provide qualified individuals with disabilities equal access to programs, service or activities unless doing so would fundamentally alter the nature of their programs, services or activities or would impose an undue burden. Many people with disabilities use “assistive technology” to enable them to use computers and access the Internet such as screen readers – devices that speak the text that would normally appear on a monitor. Because screen readers cannot interpret images unless there is text associated with it, adding text and other means of obtaining information will make the site more accessible to everyone.

The Elected Official shall:

- When posting photos, add text to explain what is in the picture.
- For video, add text that explains what the video is about.

10.0 EQUAL ACCESS

Elected Officials are discouraged, in their official capacity, from posting or commenting on social media sites that require membership or subscription. This includes subsections of platforms such as closed Facebook groups. Elected Officials may provide the group with facts,

details or links to the City's public web site to correct misinformation but should not provide comments, thoughts or further insight into an issue to which those who are not members of the social media site do not have equal access.

APPENDIX

How to redirect Personal Social Media Platform Posts:¹

Friends will still post/comment on the Elected Official's personal social media platform. The official will go to his or her elected official page and post, tagging that friend so that he or she sees the response. For example, say Joe Smith writes on Councilmember Jones's personal profile, "Hey, when are you ever going to repave Main Street?"

- Councilmember Jones goes to her **elected official profile** and posts "<<TAG>>Joe Smith, thanks for the message! Main Street is not on the immediate plans because we really need to tackle 142nd first. But, we keep checking all roads. If you see a pothole, send a quick note via the City's Report a Problem on the website. By the way, per State public records laws, I will answer all questions/comments about the City of Sumner from this page, not my personal profile." That last line can be a standard line used in all responses following this situation.

To help guide personal friends, an Elected Official may repost their own posts from their official page on their personal page because that's now a secondary post.

- For example, you could put "I'm having so much fun serving the City of Sumner! Check out my official councilmember page." And include a repost of something about an upcoming meeting. **However, this should be used sparingly because it invites comments on the post that should be public record and forces you to jump back to the official page again per above.**

¹ These guidelines primarily work for Facebook, Twitter and Instagram. If you need further assistance please contact the Communications Director.

PUBLIC RECORDS ACT/ OPEN PUBLIC MEETINGS ACT

And....Social Media Use!

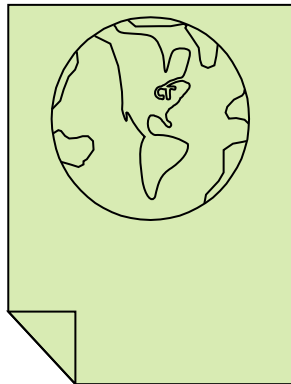
Public Records Act

- All public records of state and local agencies to be made available to the public
- Liberally construed in favor of disclosure
- Chapter 42.56 RCW

What is a “public record?”

- “Any (1) **writing** containing information (2) **relating to the conduct of government** or the performance of any governmental or proprietary function (3) **prepared, owned, used, or retained** by any state or local agency regardless of physical form or characteristics.”
- RCW 42.56.010(3)

A writing



Relating to Conduct of Government

- Information that refers to or impacts the actions, processes, and functions of government.
*Anything created in the course of carrying out the duties/functions of government work.
- Even if only INDIRECTLY

Prepared, owned, used, retained by “the City”

- A person who conducts public business
- A person who acts as an agent/in official capacity

→ 1) Job requires it, 2) employer directs it, (3) furthers employer's interests

PERSONAL EMAIL/CELL PHONE

TIP: Do not use your personal device (email account/cell phone/social media) for Council business.

Why does this matter?

An Expensive Lesson

RCW 42.56.550(4)

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

Yes, \$100 per day per record.

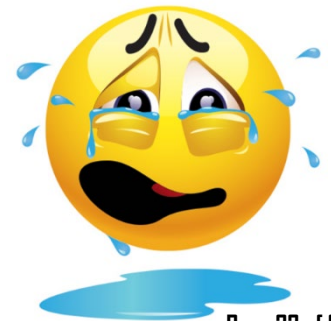
GULP.

Fortner v. City of Bainbridge Is. (2013)

- 3 Councilmembers used personal email account to send/receive emails
- Forwarded some emails to city account, deleted the emails decided not to respond to.

Fortner v. City of Bainbridge Is.

- Court ruling: violated PRA in destroying public records, inadequate search to recover deleted emails. Ordered councilmember to turn over computer for forensic inspection. Ordered sanctions and attorney fees
- \$350,000 settlement
- \$140,000 legal fees to plaintiffs (requestors)
- \$245,000 in legal costs paid by the City
- Councilmember resignation



West v. Vermillion (2016)

- Council Member's personal website and email account – used to campaign for Puyallup City Council.
- After elected, continued to receive emails from constituents/public and City staff
- If email required official response, would forward to City staff, then delete
- Used city email address for all city business.

West v. Vermillion

- PR request: “communications received or posted” through council member’s website and email account
- Council member and City refused claiming right to privacy on personal account(s).

West v. Vermillion

- Court held: no privacy rights to public records in a personal email account
- Ordered council member to search for and produce all public records in personal account **under penalty of perjury.**

Private Accounts/Devices

- “the public has a right to inspect public records located on a personal computer unless the records are ‘highly offensive to a reasonable person and are not of legitimate public concern.’” *West v. Vermillion*

West v. Vermillion

Takeaway:

- **The same rule applies to text messages on private phone, Facebook messenger, documents created on private device, etc.**
- HOW TO COMPLY when receive a request that implicates personal website/email:
 - *Thoroughly* search own files/devices/account
 - Provide all public records to agency
 - Submit affidavits describing search to show that it was adequate
- **Best practice: do not use private device, private account, or personal texts/email to discuss, prepare or review City business. In the event you receive something on a private page/private email, immediately forward to City account.**

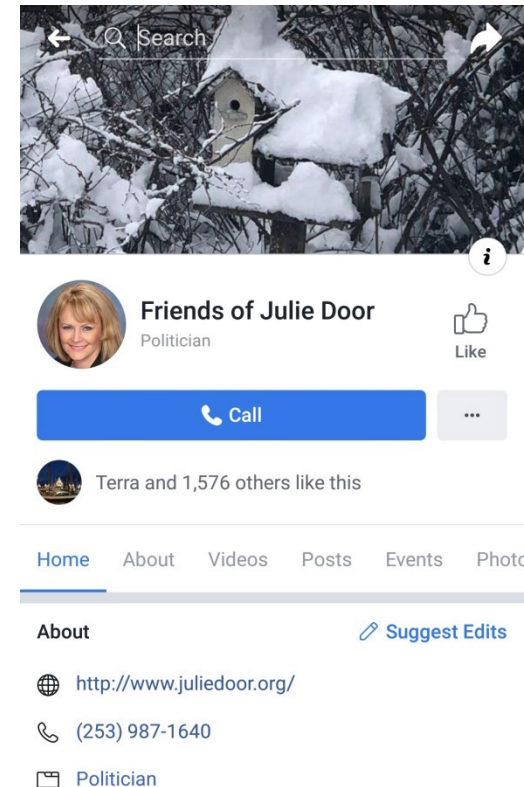
SOCIAL MEDIA POSTS

TIP: Link/share City information to social media rather than creating your own content.

Why does this matter?

West v. Puyallup (2018)

- Puyallup Council Member has a personal FB page: “Friends of Julie Door”
- Purpose of page: provide information to constituents and supporters



West v. Puyallup (2018)

- Request for “public records sent to or received at Council Member Julie Door’s Facebook site.”

**Friends of Julie Door**
February 9 at 11:10 AM · 🌐

If you are wondering which roads will be plowed, follow this link.

<http://www.cityofpuyallup.org/DocumentCenter/View/1248/IceSnow-Routes-Map-PDF?bidId=>

 CITYOFPUYALLUP.ORG
www.cityofpuyallup.org

 4  5 Shares 

 Like  Comment  Share

**Friends of Julie Door**
February 4 at 7:05 AM · 🌐

Information about how the City addresses snow / ice can be found on the city’s website or by following these links.

<https://www.cityofpuyallup.org/348/Snow-Ice>

<https://www.cityofpuyallup.org/DocumentCenter/View/1248/IceSnow-Routes-Map-PDF?bidId=>

 CITYOFPUYALLUP.ORG
www.cityofpuyallup.org

 2  1 Comment  1 Share 

 Like  Comment  Share

West v. Puyallup

Court held:

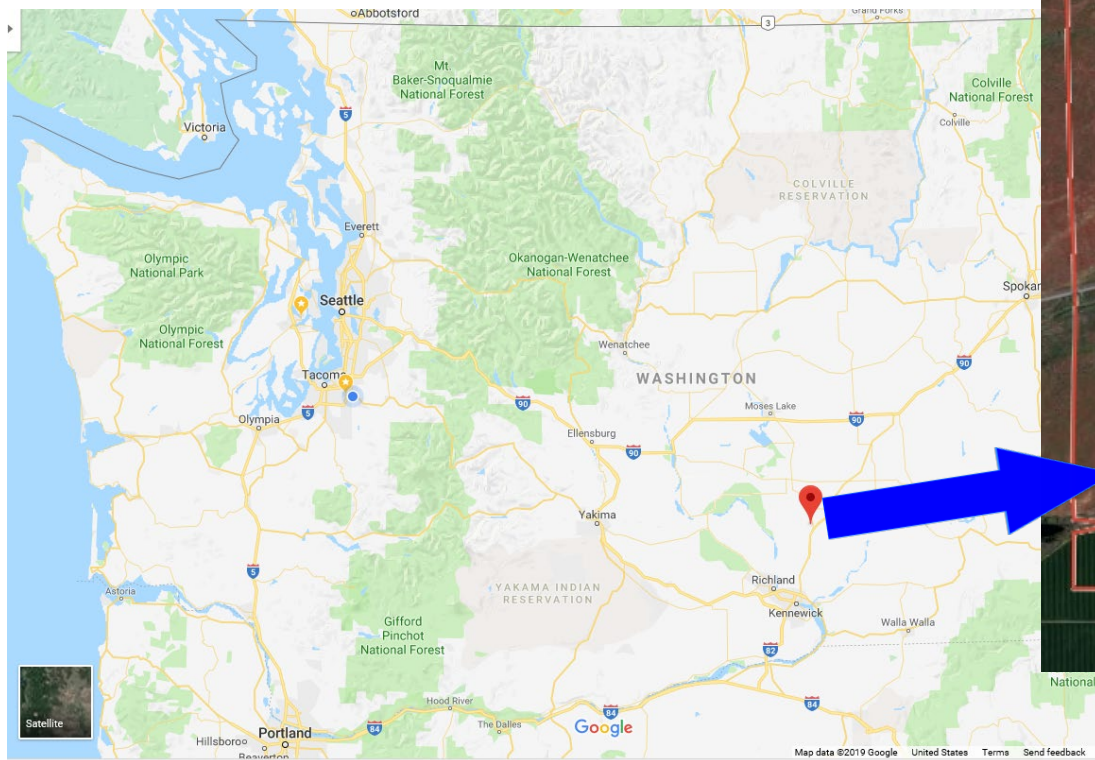
- FB Posts were “writings”
- Referenced City functions (links to council packets, links to City budget, links to discussions about road widening projects).
- BUT the City did not “prepare” her posts. She was disseminating general, publicly-available information *not created in her official capacity.*

West v. Puyallup takeaways

- Does your job require the post?
- Is the social media page characterized as an “official” page of the City?
- Do the posts amount to conducting City business? Do they further the City’s interests?
 - Simply disseminating general information, or having detailed discussions re: Council business, or matters pending before Council?

Huge staff impact of public records requests....

Zink v. City of Mesa, Washington



Population: 488
1.64 square miles

Zink v. City of Mesa

- City terminated Zinks' building permit for suspension/abandonment
- From 2002-2005, the Zinks made 172 public records requests, mostly related to the city's decision re: the building permit
- Not happy with City's responses to requests, the Zinks filed PRA lawsuit against City

Zink v. City of Mesa

- Trial court: impossible for the City to comply with the PRA considering the number of requests and limited manpower
- Zinks' requests amounted to harassment

Zink v. City of Mesa

- Appellate court: disagreed.
- Said the trial court had to decide if the City strictly complied with the PRA

Zink v. City of Mesa

- Trial court: The City did not comply. 33 total violations lead to \$352,955 in penalties.
- Penalty exceeded 100 percent of the City's 2015 annual general fund tax revenues
- Would cost \$350 per resident
- Reduced the penalty to \$175,000 + \$25,746 in fees/costs

Zink v. City of Mesa

Appellate court:

- Agreed it was lawful to adjust the penalty down
- Goal of the penalty is to deter future misconduct
- Courts have discretion in assessing penalties.
There is no longer a minimum per-day fee

Requestors have a variety of intents.

- Intent doesn't matter. Courts look only to City's response and compliance with PRA.
- Takeaway: If you create a record, expect it to be requested, and expect legal to ask you to search.

QUESTIONS TO ASK YOURSELF BEFORE POSTING

1. Could I post this if I wasn't an elected official?
 - i.e. would I otherwise have access to this information?
2. Would I post this if I wasn't an elected official?
 - i.e. am I serving in my official capacity?
3. Was I asked to post/disseminate this information?
 - Or, does it further the City's interest?

Open Public Meetings Act

Open Public Meetings Act

- All meeting of the governing body of a public agency **shall be open and public** and all persons shall be permitted to attend [...]”
- Chapter 42.30 RCW

When does the OPMA apply?

1) When there's a “**meeting**”

- “a majority of its members gathers with the collective intent of transacting the governing body's business.”
- [Citizens All. for Prop. Rights Legal Fund v. San Juan Cty., 184 Wash. 2d 428, 444, 359 P.3d 753, 761 \(2015\)](#)
- Even a telephone or video conference meeting constitutes a “meeting” so long as the meeting satisfies the limits of the OPMA. *AG Opinion, 2017.*

When does the OPMA apply?

- 2) In which **action** is taken
- transaction of official business of a public agency by a governing body.
- Includes deliberations and discussions – Not just final action
- “Final action” = a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity.
- RCW 42.30.020(3)

When does the OPMA apply?

- Whenever majority gathers and **formally or informally**, discuss or transact official business
- Includes:
 - RCMs and Study Sessions
 - Work lunches
 - Retreats
 - Emails
 - Group texts
 - Phone conferences
 - **Committee meetings where more than 3 members are present.

What does the OPMA require?

- Regular Meetings:
 - Establish time for Regular Meetings
 - Must give 24 hours notice for agenda
- Special Meetings:
 - May be called – limited to discussion of only those items published on the agenda.
 - Must give 24 hour notice for special meeting
 - *Seattle Head Tax Repeal 2018 meeting notice published only 23 hours 51 minutes prior to meeting. And, allegations that councilmembers conducted OPMA violation by closed door discussions prior to vote. Lawsuit filed. Seattle settled case for \$35,000 in 2019.

What does the OPMA require?

- Minutes: recorded and open to public inspection
- All ordinances, resolutions, rules, regulation, order, directive etc may only be adopted in open public meeting
- Requires all discussion on matters before Council to occur in open public meetings, not private closed door meetings.

Exceptions

Executive Sessions:

- Select site/acquisition of real estate (when public knowledge would cause a likelihood of increased price)
- Minimum price for real estate (when public knowledge would cause a likelihood of decreased price)
- Review negotiations on performance of publicly bid contracts (when public knowledge increase costs)
- Evaluate qualifications of applicant for public employment
- Evaluate qualifications of candidate for appointment to elective office
- Discuss with legal counsel: litigation/potential or threatened litigation
- Etc. as outlined by RCW 42.30.110.

Exclusions to OPMA

There are only four, and only two come up in the City's context:

1. Labor negotiations/collective bargaining
2. Deliberations of the Council while serving in their quasi-judicial role.

OPMA Violations:

- (1) a majority of the governing body meets,
- (2) all participants collectively intend to transact official business, and
- (3) the participants discuss issues that may or will come before the governing body for a vote.

City of Seattle v. Kaseburg, No. 76204-4-I, 2018 Wash. App. LEXIS 686, at *13 (Ct. App. Mar. 26, 2018)

When would this matter?

- Chamber luncheons
- Dinner parties
- Group text messages
- Run-ins at City Hall council office
- Closed Facebook groups
- Social events
- Surveys
- Reply all on emails

Be mindful of how many are present and what you're discussing!

OPMA Violations

- What happens if there is a violation
 - Action is null and void
 - Cannot be ratified at later meeting
 - If violation proven at trial → Attorney fees for plaintiff
 - Civil penalties

OPMA Violations

Civil Penalties

- Individual members subject to civil penalties if attend meeting KNOWING it is in violation
- \$500 for first violation
- Up to \$1,000 for each subsequent violation
- A violation could serve as the basis for a recall petition
- City is liable for all costs, including reasonable attorney fees for violations.
- RCW 42.30.120(1)



Tip: Notify City before attending
social event where other
Councilmembers may be present.

Why does this matter?

Yakima County

- Four of five commissioners attended Chamber of Commerce luncheon
- Attendance cost \$30 – many of public could not afford to attend
- Each commissioner presented on various topics involving county government

Yakima County

- At end of presentation, Commissioners were asked about marijuana issue.
- Commissioners individually answered.
- Each stated would not seek another advisory vote on allowing marijuana businesses in unincorporated areas of the county

Yakima County

- Local cannabis store owner filed lawsuit against each commissioner
- Claimed discussion violated the OPMA because:
 - No notice
 - No agenda
 - Not public meeting b/c of \$30 entry fee

Yakima County

- County disagreed that there was a violation → claimed that notice was provided re: the meeting and that no official vote or action was taken.
- Yakima County paid \$13K to settle the lawsuit
- Would have been more expensive to take to trial

Sumner Social Media Policy

- Applies to: “**Any** social media platforms used by Elected Officials in their official capacity to communicate with constituents or the general public.”
- Must comply with: Public Records Act, OPMA, and State retention requirements

Sumner Social Media Policy

- City maintains and preserves all records/posts to platforms owned by the City.
- You are responsible for preserving records/posts to your own platforms (accounts).
 - Should state that contents is subject to public disclosure
 - Should link to Social Media Policy
 - Should monitor regularly for public record requests

Sumner Social Media Policy

If you receive a request for public records (in any manner)

- Refer requestor to City Clerk or City Website to make formal request
- Inform City Clerk immediately and provide a copy of the request
- Strict 5 day response deadline

Sumner Social Media Policy

Content:

- Same professional behavior/decorum as required during Council meetings
- Use only to informally communicate with the public
- Direct public to City's official website for discussion, services, facts, documents
- NO decision making, accepting or soliciting public input on matters that will come before council

Sumner Social Media Policy

- Do not delete or block commenters who simply disagree or are critical of elected official/City.
- Be ADA-friendly - add text to accompany photos and videos where possible.

Tip -

- AMPLIFY what the City already posted by reposting/sharing.
 - Best practice for emergencies. Even slight rewordings could cause costly confusion.
 - Helps keep your account clear.
 - Helps remind your public to follow the city and ask follow-up questions there.

Tip -

- Should I write/post/send this?
- Assume that everything you put in an email, a social media post, or a text will be subject to public inspection and printed on the front page of a newspaper.
- (Or...presented to a judge/jury in a court room)

EXTRA, EXTRA!

BREAKING NEWS

HARRY HATES CATS!

15:09 "IS THIS REALLY NEWS?" ASKS COMMENTER | 5 MILLION RETWEETS IN 1 HOUR ALREADY



Thank you!



Questions?