



TOWN COUNCIL STUDY SESSION AGENDA
March 11, 2019
5:30 PM

I. Town Council Items

II. Study Session Items

1. Council Parade Entry for Parker Days - Spain/Anderson - 10 minutes
2. Social Media Policy - Schledorn/Cleveland/Anderson - 30 minutes



MEMORANDUM

TO: Mayor Mike Waid and Town Council

FROM: Brooke Spain, Special Events and Sponsorship Coordinator

DATE: March 11, 2019

SUBJECT: Town Council Parade Entry for Parker Days

ISSUE:

The Town provides a Town Council entry each year for the Parker Days Parade. For the past nine years that entry has been a horse and wagon. Staff was asked to look into other options for the 2019 parade. At a recent Council Communications Liaison meeting, this topic was discussed. The Council Liaisons at that meeting requested that we bring this topic to a Study Session for the entire Council to discuss.

FISCAL/BUDGET IMPACT:

The Communications Special Events budget currently has \$650 that can be allocated to the Parker Days Council entry. As long as the entry costs are no more than \$650, there will be no additional impact to the budget.

BACKGROUND:

Prior to last year, staff contracted two rigs, each seating 12-15 people, to ensure that all Councilmembers and their guests could ride. Last year due to budget restraints, staff reduced the entry to one horse and wagon with seating capacity between 15-18 people and asked that only Town Councilmembers and their immediate family members participate. The cost to the Town was \$650. During the planning last year, the topic of not having a horse and carriage as the entry was brought up by our Council Communications Liaisons.

Prior to utilizing a horse and carriage as its entry, Town Council utilized a few other vehicle options such as Parker Town vehicles and classic cars.

RECOMMENDATION:

Provide direction to staff.

REQUESTED DIRECTION:

Council guidance on the Town Council entry for the 2019 Parker Days Parade scheduled for Saturday, June 8, 2019. The parade has a start time of 8:45 a.m. Council and guests will be asked to arrive by 8:30 a.m.

ATTACHMENT:

None



MEMORANDUM

TO: Mayor Mike Waid and Town Council

FROM: Kristin Schledorn, Deputy Town Attorney
Jim Cleveland, Acting Deputy Town Administrator/Parks,
Recreation and Open Space Director
Andy Anderson, Communications Coordinator

DATE: March 11, 2019

SUBJECT: Elected Official Social Media Policy

ISSUE:

The purpose of this study session item is to review and discuss a proposed Elected Official Social Media Policy Statement.

FISCAL/BUDGET IMPACT:

None.

BACKGROUND:

There have been several lawsuits filed locally and nationally, alleging violations of constituents' First Amendment rights, when those constituents have been "blocked" by public officials on social media platforms, such as Facebook and Twitter.

In 2017, the President of the United States and members of his staff were sued after he blocked plaintiffs from his @realDonaldTrump Twitter account. In that case, the judge held that the President's Twitter account is a designated public forum and that blocking the plaintiffs based on their political speech constituted viewpoint discrimination that violated the First Amendment.

In Colorado, there are at least two recent cases involving elected officials and Facebook. In 2018, the Mayor Pro Tem of Thornton was sued after she blocked and removed comments on her Facebook page. Similarly, the Lafayette Mayor was sued this year for similar reasons. Attached to this memorandum are news articles related to these lawsuits.

These cases suggest that municipalities should adopt social media policies that: (1) require separation of elected officials' private social media accounts from their official government accounts; (2) require elected officials use only their official government accounts to discuss government business; and (3) expressly prohibit viewpoint discrimination (by deleting posts or

blocking individuals) on such official government accounts.

Attached to this memorandum is a proposed Elected Official Social Media Policy Statement for review and discussion.

RECOMMENDATION:

Staff recommends adoption of the Elected Official Social Media Policy Statement.

REQUESTED DIRECTION:

Staff requests direction on the attached Policy Statement.

ATTACHMENT:

1. Thornton Mayor Pro Tem Lawsuit
2. Lafayette Mayor Lawsuit
3. Policy Statement-Elected Official Social Media Policy

Shared from the 10/23/2018 The Denver Post eEdition

Thornton official agrees to unblock anti-fracking activists on Facebook

*By Elizabeth Hernandez
The Denver Post*

Thornton Mayor Pro Tem Jan Kulmann agreed to unblock two anti-fracking activists from her official Facebook page as part of an agreement announced Monday in a lawsuit accusing the elected official — a proponent of oil and gas interests — of violating free speech rights by censoring her government social media page.

The stipulation, which was approved by a federal magistrate, also said Kulmann will not block anyone or delete any further comments from her official Facebook page while the lawsuit proceeds.

The agreement came after Boulder County commissioner candidate Cliff Willmeng, co-founder of the anti-fracking group East Boulder County United, and Marine Corps reservist Eddie Asher filed a lawsuit in U.S. District Court in Denver alleging that Kulmann deleted their posts on the mayor pro tem's official Facebook page.

"The order will remain in effect through Election Day and allow Mr. Willmeng and Mr. Asher, and everyone else, to fully exercise their First Amendment rights," Andrew McNulty, the attorney representing Willmeng

and Asher, said in a statement.

Stan Garnett, Kulmann's attorney, called the lawsuit a "complete publicity stunt" brought by two individuals campaigning for Proposition 112, the "Safer Setback Initiative."

"They filed a 58-page federal court complaint in request for an injunction without even extending the courtesy to Jan and asking her to unblock them, which she had every right to do," Garnett said.

The lawsuit said Kulmann maintains an official Facebook page as mayor pro tem that supports fracking and has repeatedly deleted Willmeng's and Asher's anti-fracking posts and has blocked them.

The lawsuit also noted that Kulmann, who opposes Colorado Proposition 112, the "Safer Setbacks Initiative," is a salaried employee of petroleum and natural gas company Noble Energy.

"Mayor Pro Tem Kulmann has a direct economic stake in Proposition 112 failing," the lawsuit said. "Jan Kulmann's censorship of dissenting views and cultivation of a false impression that Proposition 112 is universally opposed is a familiar propaganda playbook employed by authoritarian leaders across the globe."

Garnett, a former Boulder County district attorney, said people don't appreciate what public servants have to put up with online.

"I completely understand the decisions Jan made," Garnett said. "My issue is not whether what she did was fine or not fine. The issue is what's legal, and when it's a campaign website, one is allowed a fair amount of discretion about what one permits. Elected officials have to make reasonable decisions about what's going to go on their campaign pages, and Jan's decision was totally appropriate. And if there was a problem, a phone call would have solved it."

To avoid a hearing, Garnett and the plaintiffs agreed to the stipulation.

In other examples of social media and the First Amendment colliding, a federal judge in Manhattan declared President Donald Trump's practice of blocking Twitter users who criticized him and his administration unconstitutional earlier in the year, according to the New York Times.

Judge Naomi Reice Buchwald said that because the president's Twitter feed is a public forum, he violated the First Amendment when he or an aide blocked seven plaintiffs from viewing and responding to his tweets.

Buchwald did not issue an order that the president must stop blocking citizens, instead reiterating what the Constitution upholds and expecting the president to follow through.

The White House unblocked the seven Twitter users accounts while also appealing Buchwald's ruling.

Elizabeth Hernandez:

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See this article in the e-Edition [Here](#)

**LAFAYETTE**

Activist sues outgoing mayor

Cliff Willmeng filed against Thornton Mayor Pro Tem Jan Kullman for similar reason

BY ANTHONY HAHN STAFF WRITER

Lafayette resident and founder of anti-fracking group East Boulder County United Cliff Willmeng filed a lawsuit Thursday against the city's outgoing Mayor Christine Berg, alleging she violated his First Amendment rights by blocking and removing critical comments on her official Facebook page.

It comes just months after Willmeng, who was joined by Marine Corps reservist Eddie Asher, sued Thornton Mayor Pro-Tem Jan Kulmann for essentially the same thing, alleging that the elected official — who was a proponent of oil and gas interests — violated free speech rights by censoring her government social media page.

"The case is almost identical," Willmeng said Thursday. "(Berg's) political party is different (from Kulmann's), but the principles are all the same.

"She has been the mayor for some time and played a central role in weakening the community response to oil and gas," he added, suggesting a long-reiterated belief among local activists that the city's efforts to update its drilling regulations translate as dealings with the industry.

Kullman in October agreed to unblock Willmeng and Asher.

The lawsuit suggests that Berg maintains an official Facebook page as mayor and has repeatedly deleted critical posts.

"Plaintiff Clifton Willmeng is a concerned citizen who has posted comments critical of Defendant Berg on her Facebook

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page,” attorneys Darold W. Killmer, Andrew McNulty and Tania Valdez of Killmer, Lane & Newman, LLP —who are representing Willmeng in his suit — wrote in Thursday’s filing.

“For that, Defendant Berg removed his comments and blocked him from posting any further messages. Defendant Berg’s practice of stifling Mr. Willmeng’s valid criticism of her is unconstitutional, and this suit seeks to end it.”

According to the suit, the incidents in question reach back to a March 2017 exchange, when Willmeng commented on a number of posts on Berg’s Facebook page in support of the city’s Climate Bill of Rights, a radical bill ushered in by a grassroots effort in 2017 that proponents say essentially bans fracking in Lafayette.

Those and subsequent comments resulted in Berg blocking him from her page and from commenting on further posts, according to the suit, which also alleges she then deleted the comments in question. His attorneys call that “viewpoint-based” retaliation.

Specifically, the suit alleges, Berg retaliated against Willmeng because he posted comments that “were anti-fracking and critical of her position on the issue of fracking. Her retaliatory actions were premised on Mr. Willmeng’s political opposition to her views on fracking and his criticism of her on this issue.”

Willmeng’s suit is not unprecedented.

A federal judge in Manhattan in 2018 ruled unconstitutional President Donald Trump’s proclivity for blocking Twitter users who criticized him and his administration.

Because the president’s Twitter feed is a public forum, Judge Naomi Reice Buchwald wrote in her decision, he violated the

First Amendment when he or an aide blocked seven plaintiffs from viewing and responding to his tweets.

"Mr. Willmeng can no longer comment on posts of Defendant Berg's Facebook page," the suit states. "He can no longer interact with other users in comment threads. Each new Facebook post by Defendant Berg represents another discussion Mr. Willmeng is foreclosed from participating in.

"The blocking of Mr. Willmeng imposes an unconstitutional restriction on his participation in a designated public forum and his right to petition the government for redress of grievances."

Attorneys for Willmeng are seeking declaratory and injunctive relief, as well as compensatory damages and punitive damages.

Lafayette City Council last year adopted a new policy for how city leaders should navigate both their personal and public online presence in the wake of a similar free speech lawsuit in Virginia.

That policy included rules regarding the need for officials to separate their private and public accounts, as well as what they can discuss online.

It also dictated that no council member could limit a resident's ability to view or post comments on their official social media pages, and that city leaders must understand that anything posted or communicated through those official accounts would be subject to Colorado open records law.

Council members also must identify themselves by name and position title and use their city email address when participating in social media websites in their official capacities.

Efforts Thursday to reach Berg were unsuccessful.



Outgoing Lafayette Mayor Christine Berg is the target of a lawsuit alleging she violated Cliff Willmeng's First Amendment rights by deleting his comments on her official Facebook page and blocking him from the page.

Cliff Grassmick / Staff Photographer



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Town of Parker, Colorado

POLICY STATEMENT

TITLE Elected Official Social Media Policy Statement	PAGE 1 of 3	POLICY NUMBER <u>1-9</u>
EFFECTIVE DATE _____, 2019	REVISED DATE	
APPROVED BY COUNCIL ACTION Resolution No. 19-____		

PURPOSE

The Elected Official Social Media Policy Statement describes the manner in which Town elected officials, defined below as the Mayor and members of Town Council, are authorized to use social media in their official capacities and to set forth the rules and limitations that govern such use. This policy also sets forth the extent to which elected officials' personal use of social media may bring that personal use within the purview of Town policies.

POLICY STATEMENT

Elected Officials Use of Social Media

This policy applies to the use of social media by Town elected officials when that social media use is in their official capacity as Mayor or as a member of Town Council. This policy is intended to protect the rights of the public in their ability to access public forums, and to ensure that the Town is able to comply with its requirements under the laws of the State of Colorado and the United States of America.

Definitions

Account: Elected officials' presence on social media either through a Town-provided social media account, or otherwise in their official capacity as Mayor or member of Town Council.

Elected officials: The Mayor and members of Town Council.

Town: The Town of Parker, acting through its Town Administrator or its Communications Director, or their designee(s).

Personal use: Elected officials' use of social media that does not make use of their Town e-mail address, position, title, or official capacity.

Personally identifiable information: Information that can be used to distinguish or trace an individual's identity, such as date and place of birth, personal addresses or telephone numbers, Social Security number, driver's license number, or records that contain genetic, medical, or psychological data or information. Personally identifiable information also includes personal financial information and other information maintained because of the employer-employee

relationship, pursuant to Section 24-72-202, C.R.S. For purposes of this section, “personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

Social media: Social media websites create and foster online social communities for a specific purpose and connect users from various locations and interest areas. These websites and platforms offer many different ways for users to interact with one another, such as instant messaging, blogging and commenting, microblogging, events, status updates, online communities, discussion forums, message boards, podcasts, website link sharing, wikis, video conferencing, and sharing photos and videos. The Town acknowledges that this type of technology changes rapidly and, therefore, this list is intended to be illustrative rather than comprehensive, and this definition should in no way be construed to limit the applicability of this policy.

Limitations on Use of Social Media

Social media accounts. Elected officials shall not establish, operate, maintain or use any social media accounts in their official capacity as Mayor or members of Town Council other than in accordance with this policy. Any social media accounts created, operated, maintained or used by elected officials for the purpose of conducting Town-related business, including, without limitation, constituent communication, that is not operated, maintained or used in compliance with this policy, shall be considered as having been undertaken, maintained and used outside of their official capacity as elected officials and, therefore, the Town shall bear no responsibility for what transpires on, or because of those accounts.

Separate accounts. Any social media account established, operated, maintained or used by elected officials in their official capacity must be separate and distinct from any personal social media accounts of individuals.

Town-created accounts. The Town does not currently create, operate or maintain social media accounts for the use of elected officials in their official capacity. If the Town does create, operate or maintain such accounts in the future, all such accounts created are the property of the Town; therefore, those using such accounts must provide the Communications Director with all information required to access those accounts, such as user names, passwords, and the like. Elected officials who exceed their authorization or who violate this Policy may have their privileges to use such accounts revoked.

First Amendment protection. Neither the Town, nor elected officials, may restrict any person’s ability to view or post comments on social media pages that are maintained or operated in an elected official’s official capacity, based in any way, upon the viewpoint of that person or the content of that person’s speech.

No expectation of privacy. All participation in social media by elected officials in their official capacity may be open to public inspection in accordance with the Colorado Open Records Law (C.R.S. § 24-72-101 *et seq.*), and elected officials do not have an expectation of privacy concerning such participation. The Town may monitor all use of such accounts and require removal of any content that violates any law.

Discussion between elected officials. In order to assure compliance with the Colorado Open Meetings Law (CRS § 24-6-402 *et seq.*), elected officials shall refrain from engaging in

discussions with more than one elected official through social media, including personal social media accounts, regarding Town business.

Confidentiality. Elected officials shall not, when acting on social media in their official capacity, post or release proprietary, confidential, sensitive, or personally identifiable information.

Personal use of social media outside of elected officials' official capacity.

A. Elected officials who engage in personal use of social media outside of their official capacity may not use the Town logo, or that of any Town department or program.

B. Elected officials may not speak as representatives of the Town in the course of their personal use of social media.

C. Elected officials are not prohibited from identifying themselves as holding the office of Mayor or councilmember, however, in cases where personal use of social media may be perceived as being on behalf of the Town, such as if elected officials identify themselves as such or when they address a matter that concerns the Town Council, elected officials shall include a visible disclaimer on their account to inform other users that their opinions are their own and do not represent those of the Town of Parker, such as "The postings on this site are my own and do not necessarily represent the Town of Parker's positions or opinions."

Staff Contact Information

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ca@parkeronline.org (goes to the entire Communications Department)

General Town and Town Council Social Media Inquiries

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Police Social Media Inquiries