CLEARFIELD CITY COUNCIL MEETING MINUTES
6:00 PM WORK SESSION
September 26, 2023

City Building
55 South State Street
Clearfield City, Utah

PRESIDING: Mayor Mark Shepherd

PRESENT: Councilmember Karece Thompson, Councilmember Nike Peterson, Councilmember Tim Roper, Councilmember Vern Phipps, Mayor Mark Shepherd

ABSENT: Councilmember Kent Bush

STAFF PRESENT: Community Development Director Spencer Brimley, Community Services Director Eric Howes, City Attorney Stuart Williams, Police Chief Kelly Bennett, City Manager JJ Allen, Community Relations Director Shaundra Rushton, Finance Manager Rich Knapp, City Recorder Nancy Dean, Deputy City Recorder Chersty Titensor, Planning Commission Member Megan Ratchford

VISITORS: Chris Uccardi, Megan Ratchford, Cole Ross, Dakota Wurth

Mayor Shepherd called the meeting to order at 6:00 p.m.

DISCUSSION ON CLEARFIELD CITY'S DRAFT SOCIAL MEDIA POLICY

Shaundra Rushton, Communications Manager, presented and reviewed the Proposed Elected Officials Social Media Policy with the Council. The Proposed Elected Officials Social Media Policy was 27 pages. As such, Staff presented, reviewed, or discussed the following selected general topics:

- Staff presented four options for the Elected Officials to consider which were intended to address the legal requirement to archive elected officials' social media accounts.
- Staff reviewed a draft "best practices" for elected officials posting on social media.
- Staff discussed and explained what political activities are prohibited on Council social media accounts based on the "Political Activities of Public Entities Act" found in State Code and the Clearfield City Council Rules of Order and Procedure.
- Staff discussed which government or nonprofit content was allowed and reviewed guidelines for third-party content that would or would not be allowed.
- Staff gave a recommendation in the event a councilmember wanted to promote a commercial business to include a comment of "Views are my own."
- Staff reviewed the terms of use for public comments.
- Staff presented and provided a recommended action for Council to take if a councilmember determined any comments on their social media accounts violated the terms of use and they wanted to hide or block the message.
- She discussed the First Amendment rights of individuals posting on City social media accounts and encouraged Council to be careful hiding or deleting comments to ensure that the City didn't violate First Amendment rights.

- Staff discussed with Council the option to turn off all comments on a post in very select situations and the processes that were recommended to be followed.
- Staff recommended that Council err on the side of leniency toward the poster and to contact the Communications Manager for guidance on violations and to notify Staff if an individual was blocked, or postings were removed.

The Council acknowledged the legal requirements of the Government Records Access and Management Act (GRAMA). However, the Council was not supportive of the Proposed Elected Officials Social Media Policy in its entirety, as presented by Staff. After carefully listening to Staff's presentation, the Council expressed a number of concerns, some of which were as follows:

- Various members of the Council questioned the origin of the Proposed Elected Officials Social Media Policy, as drafted.
- Various members of the Council and Staff discussed whether the draft policies were entirely based on law, or if the policies were more staff recommendations, which as drafted, felt more like directives.
- Various members of the Council expressed concerns about the archival process and which social media accounts would be affected, i.e., personal accounts, personal pages, city pages, etc.
- Various members of the Council expressed concerns regarding the potential for third-party access into the archival program.
- Various members of the Council expressed that the policies might be perceived as an attempt by staff to control the lines of communication with their constituents who elected them.
- Various members of the Council expressed concerns that the policies, as drafted and presented felt like an over-step between the branches of government.
- Various members of the Council expressed concerns that the bulk of the Proposed Elected Officials Social Media Policy was too broad and gave staff the ability to regulate officials' behavior and dictate the elected officials' responses to residents.
- Various members of the Council expressed concerns that the policy would negatively impact their ability to express their positions on various topics, or at the very least, limit their ability to communicate their positions effectively with residents.
- Various members of the Council were discouraged and rejected the proposed limit of three social media accounts to be created by the City.
- Various members of the Council questioned whether adopting the Proposed Elected Officials Social Media Policy, or any policy or best practice would mitigate bad behavior.
- Various members of the Council questioned whether the existing social media controls outlined in the Council Rules and Procedures were adequate and whether more policy was needed.
- A member of the Council requested that Staff look closely at the legal liability section of the Proposed Elected Officials Social Media Policy, specific to the term "Hostile Work Environment."
- Various members of the Council were displeased with the discussion regarding the potential increase of individual liability to each councilmember when the same level of risk existed with phone usage.

- Various members of the Council were displeased with and rejected the proposed preemptive signing of a waiver by each councilmember acknowledging that they might not be individually protected under the Utah Governmental Immunities Act for future acts found to be in violation of the Proposed Elected Officials Social Media Policy. It was preferred rather than signing the waiver preemptively, it was more appropriate to allow the regular internal determination of immunity eligibility to play out.
- Various members of the Council and Staff discussed the lack of any such same or similar waiver with any other city employee, and engaged in a more robust discussion regarding the general indemnification process that is in place for all employees, not just elected officials.

Councilmember Phipps emphasized that as elected officials, what one did and said on social media and other electronic platforms exposed the City as a whole to risk. He noted elected officials give up some privacy when they enter public office. He provided an example of when his wife was serving on the Davis School District Board and her personal texts and emails were subject to a records request and could have been used against her and the School District. While agreeing with some points expressed by various members of the Council he did not agree with all the concerns expressed.

JJ Allen, City Manager, clarified that the intent behind creating the policy was not to be heavy-handed and impose policies that would limit the councilmembers' positions. He told them their jobs, as staff, was to research best practices and present policies that were well thought out and sound and in the best interest of the organization and the community. He said Staff had identified areas where the organization had increased risk exposure creating a greater liability for the City. He stated the proposed policy was a professional recommendation on how to best mitigate it, while still giving some options with some wiggle room. He posed the driving question behind the policy was how much risk and the subsequent liability the City was willing to tolerate.

Stuart Williams, City Attorney, informed the Council that the Proposed Elected Officials Social Media Policy was primarily taken from the International Municipal Lawyers Association (IMLA) template that was being used throughout the United States and that the Communications Manager stated that she reviewed and integrated a few other local cities policies and attempted to make the proposed draft unique to the needs of Clearfield. Mr. Williams reiterated the message of the City Manager, that he did not think the intent of the proposed policy was to stifle any communication coming from the Council, but for the City to ensure that there was an automatic archival process to capture and store the communication thereby reducing potential risk and liability for the City.

In response to prior Council comments regarding personal accountability for violations of proposed social media policies or GRAMA laws resulting in residents voting a councilmember out of office, Mr. Williams explained that as Staff, the Proposed Elected Officials Social Media Policy was intended to protect the entity, the City itself, and not an individual councilmember. Mr. Williams explained the usual process of determining if an employee (or councilmember) was provided indemnification in the event a lawsuit was filed against a councilmember and the City. Councilmember Peterson expressed that there needed to be a consistent liability policy for the entire workforce and not only elected officials, which was

why she, as well as various other councilmembers expressed a strong objection to the proposed waiver related to indemnification and the Utah Governmental Immunities Act.

The majority of the Council present expressed significant reservations with the Proposed Elected Officials Social Media Policy as drafted, and provided Staff with valuable information and feedback to readdress the topic in the future.

Councilmember Peterson moved to adjourn the work session and reconvene in the policy session at 7:00 p.m., seconded by Councilmember Thompson.

RESULT: Passed [4 TO 0]
YES: Councilmember Thompson, Councilmember Peterson, Councilmember Roper, Councilmember Phipps
NO: None
ABSENT: Councilmember Kent Bush

APPROVED AND ADOPTED
This 24th day of October 2023

/s/ Mark R. Shepherd, Mayor

ATTEST:

/s/ Nancy R. Dean, City Recorder

I hereby certify that the forgoing represents a true, accurate, and complete record of the Clearfield City Council meeting held Tuesday, September 26, 2023.

/s/ Nancy R. Dean, City Recorder