



BOARD OF ETHICS
CITY OF CHICAGO

PRESS RELEASE

January 8, 2019

In response to inquiries raised by numerous aldermen to the staff of the Board of Ethics, the Board has issued Advisory Opinion 18038.A.1, addressing the use of social media accounts such as Facebook or Twitter by City of Chicago elected officials or candidates, Chicago Police Department personnel, and, by extension, City employees and officials generally.

The opinion addresses the three (3) primary types of social media accounts or websites used by City elected officials: (i) official City pages; (ii) political/campaign pages; and (iii) personal pages that typically have elements of the first two. It discusses in detail what content can be posted to each type of account, consistent with the City's Governmental Ethics Ordinance. The Executive Summary section of the opinion provides an overview of the Board's advice and determinations with respect to each type of account. The opinion also establishes general rules covering, among other topics: (i) when disclaimer language should be used; (ii) when the City seal and/or other official indicia of the City can be used, and when they cannot be used; (iii) when account administrators can block followers or delete comments; and (iv) the key distinction between "political" commentary or content and "electioneering" content — the latter cannot be posted on any account or page that is or functions as an official City account page by, for example, dispensing information to constituents about how to request City services.

Please contact the Board at 312-744-9660 with questions.



BOARD OF ETHICS
CITY OF CHICAGO

ADVISORY OPINION

Date: January 8, 2019

Re: Case No. 18038.A.1, Use of Social Media; City-owned Property, Prohibited Political Activity

Executive Summary

This Board of Ethics advisory opinion addresses: (i) the use of social media accounts¹ by City of Chicago elected officials and Chicago Police Department personnel, and, by extension, City employees and officials generally; and (ii) what content can be posted to each type of social media account, consistent with the City's Governmental Ethics Ordinance (the "Ordinance"). There are three (3) essential types of these accounts or sites discussed: (i) official, (ii) political/campaign, and (3) "personal" ones displaying elements of the first two.

The issues we address are nuanced. Websites, Facebook pages, Twitter accounts – all are, by design and intention – personalized. Yet, we can, and do here, establish the following general rules:²

- City elected officials' "political/campaign" (as described below) websites or social media accounts may include content regarding City/ward business, provided these websites or accounts: (i) are not funded or maintained with City resources; (ii) do not take on the character of an "official" City website or page, such as including the City seal or links to the City's website or City services in such a manner as users could reasonably think it is a City page; and (iii) contain appropriate disclaimer language on the main page identifying the accounts as personal, non-governmental accounts that do not represent the official policies or positions of the City of Chicago.
- Elected officials may post political or electioneering content on their "personal" (and, of course, their "political/campaign") accounts or websites, including friendly or critical commentary on other politicians or their policies, campaign donation links, sample ballots, candidate endorsements, etc., provided these accounts or pages: (i) are not funded or maintained with City resources; (ii) do not take on the character of an "official" City website or page, such as including the City seal or links to the City's website or City services in such a manner as users could reasonably think it is a City page; and (iii) contain appropriate disclaimer language on the main page identifying the accounts as personal, non-governmental accounts that do not represent the official policies or positions of the City of Chicago.
- If City elected officials' "official" or "personal" websites or social media accounts (as described below) do include the City seal and/or other indicia of an "official" City or ward website and otherwise meet the criteria described above, they must remain free of "electioneering" content, such as "Reelect me for the

¹ For purposes of this opinion, "social media" refers to, but is not limited to, Facebook, Instagram and Twitter accounts. The meaning of the term "social media" for purposes of this opinion is Merriam-Webster's: "forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (such as videos)." See <https://www.merriam-webster.com/dictionary/social%20media>

² This advisory opinion is intended to supplement the **Handbook for Effective and Ethical Ward Operations**, First Edition (2019) (the "Handbook"), currently being produced by the City Council's Committee on Workforce Development. The *Handbook* contains significant content written by staff of the Board of Ethics, and our staff will update it accordingly.

following reasons ...” and may have no links to any political committee or for making campaign donations, even if the sites or accounts are funded fully with political or campaign funds and include any legally mandated language about their funding.

- Elected officials whose “personal” social media accounts include political content, such as political endorsements and/or opinion pieces on topics related to official City business, or include no political content but include postings commenting on public affairs or matters involving City government, **should not** block or delete followers from accessing such pages or delete critical or negative comments, unless the comments are obscene, profane, libelous or defamatory, or are commercial and posted to sell goods or services.
- Chicago Police Department (“CPD”) personnel are prohibited, pursuant to a departmental order, from posting intellectual property of the CPD or the City of Chicago, such as badges and logos, on their personal social media accounts.

I. Background

Several questions were posed to Board staff by aldermen before, during and after our agency’s budget hearing on October 30, 2018, regarding how the Ordinance limits what elected officials (and CPD personnel) may post on social media platforms, namely, their “official City” pages; their purely “political” pages; and their “personal” pages. This opinion addresses these questions.

Some City elected officials may have all three types of pages, while others may have only one or two.

In addition to the questions posed at the budget hearing, requests for informal advisory opinions and guidance from aldermen and other elected officials or their staff regularly come to the Board by phone or email regarding whether, and to what extent, the Ordinance applies to aldermanic social media accounts and what content can be posted, and on which accounts. This opinion is intended to address these as well.

The Board recognizes the ever-expanding role of social media as a means of communication³, and, in turn, the increase in the number and complexity of related issues raised. In the course of preparing this opinion, our staff has examined dozens of “official,” “personal,” and “political” social media account and websites of City, state, and federal elected officials. Accordingly, and as stated by our Executive Director at our agency’s budget hearing, we issue this formal advisory opinion pursuant to our authority under §§2-156-380(e) and (l) of the Ordinance.

II. Relevant Governmental Ethics Ordinance Provisions

In this opinion, we discuss and interpret two (2) Ordinance sections. They are:

§2-156-060. City-owned property. No official or employee shall engage in or permit the unauthorized use of any real or personal property owned or leased by the City for City business.

§2-156-135. Prohibited political activities...

(b) No official or employee shall intentionally misappropriate any city property or resources of the city in connection with any prohibited political activity; provided, however, any official or employee may reserve and rent a city-owned facility at a fair market value before any such activity or event connected therewith.

³ In a 2017 case, the U.S. Supreme Court recognized that social media platforms like Facebook and Twitter provide “perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard.” *Packingham v. North Carolina*, 137 S.Ct. 273, 582 U.S. _ (2017).

III. Application of the Ethics Ordinance to the Questions Posed

A. Chicago Police Department Personnel. Prior to our budget hearing, Alderman [redacted] asked “what are the limits in terms of posting political content on one’s Facebook or Twitter or Instagram page, particularly for City employees, like Chicago Police Department [“CPD”] members, who may describe themselves factually as Chicago Police personnel, or even display a CPD badge or reasonable facsimile thereof on their social media pages?”

With respect to the alderman’s specific question regarding CPD officers who may describe themselves factually as police officers and/or display a Department badge on their personal social media pages, the CPD’s General Order G-09-01-06(V)(c)⁴ prohibits the “posting, displaying, or transmitting” on social media outlets of:

(5) any intellectual property of the Department or the City of Chicago without the specific authorization of the Superintendent or his/her designee. Department or City of Chicago intellectual property includes but is not limited to logos, uniforms, [and] official photographs...

Police departments across the country have policies similar to that of CPD.⁵ In light of CPD’s order regarding the use of social media, the Board advises that, while CPD officers cannot post the intellectual property of the department, such as a badge, on their social media accounts, they may use their job title, and may post political content, provided they: (i) include disclaimers making it clear that they are not speaking for the Chicago Police Department; and (ii) comply with any CPD-specific directives and rules.

B. Elected Officials’ Social Media Pages. We set our discussion of elected officials’ social media accounts and websites in the context of the overarching general principle: government funds or resources should not be spent to help incumbents gain reelection.⁶

With that cardinal rule in mind, we advise, in general, that non-official “personal” or “political” social media accounts of City elected officials (or any City employees or officials) who may wish to comment on public affairs or matters involving City, State, or federal government policies or politicians include a disclaimer, visible on the account’s main page, identifying the account as a personal or political account. For example:

“This is the personal, non-governmental account of Alderman Jane Smith” or “This is the political account of the Friends of Jane Smith, and is paid for entirely by funds from that organization in accordance with any applicable State laws or policies.”

Or

“This is a private account that contains my personal views and impressions. While I may occasionally provide information of an official nature as a convenience to my readers, this is not an official social media account of the City of Chicago and does not represent the official policies or positions of the City of Chicago (or the Department of X or the City Council”).

⁴ <http://directives.chicagopolice.org/directives/data/a7a57bf0-135f9205-ceb13-5f94-7e998c13b2be7890.pdf>

⁵ See, e.g., Philadelphia Police Directive 6.10 <http://www.phillypolice.com/assets/directives/D6.10-SocialMediaAndNetworking.pdf>; Minneapolis Police Department Policy and Procedure Manual http://www.minneapolismn.gov/police/policy/mpdpolicy_1-300_1-300; and Albuquerque Police Department Order SOP1-2 <http://documents.cabq.gov/police/standard-operating-procedures/1-02-social-media.pdf>

⁶ See *Common Cause v. Bolger*, 574 F. Supp. 672,683 (D.D.C. 1982), aff’d, 461 US 911 (1983); see also Board Case No. 18038.A.2, in which we determined that aldermen and their staffers may not engage in “political activity” (as defined) in or with visitors to their City or ward office, but that they may give out general information such as where to vote and assist walk-ins in completing voter registrations form while on City time or with City resources, though these activities are fraught: no “political activity” can occur. https://www.chicago.gov/content/dam/city/depts/ethics/general/AO_ElectOfficials/18038.A.2.pdf

Similarly, should City elected officials have Twitter (or Facebook) accounts that link to or list their “City” or “official” website or pages (e.g., in the left-hand column, underneath the user’s profile (@) and location icons (📍), or next to the user’s website icon (🌐), then: (i) if they choose to include “electioneering” content (for example, “reelect me because ...” or “my opponent claims this ... here’s why that’s bad policy ...”) on these accounts, the accounts become “political” or campaign accounts, and thus cannot contain any links to their “City” or any other “personal” website or social media account that displays the City seal⁷; and (ii) the Twitter (or Facebook) pages must have a prominent disclaimer such as the following: “This is the political, non-official twitter account of Alderman A, and represents his or her personal and political views only. To view his or her official Aldermanic Twitter account, see @AldermanChicago51.”

However, we note that our examination of dozens of websites and Facebook and Twitter accounts shows that many include political commentary (for example, retweeting President Trump’s tweets with critical commentary) but are not otherwise campaign or “political” sites. We conclude that such postings are analogous to public statements politicians regularly make to the media, and are qualitatively different from “electioneering” content. While we recognize that this distinction – which is a critical one – may be subtle in some instances (some could argue that all actions or posting made by an incumbent are in part to secure reelection), we here determine that “electioneering content” may occur only on “political” or campaign websites or accounts, and that any site or account that contains such statements may not contain links to their official City pages or any other pages or accounts that display the City seal.

C. Posting Community Events or Other Notices. Aldermen _____ and _____ raised additional questions regarding what they can post on their official City and their political or personal social media pages. The general advice outlined in section III.B of this opinion is responsive to their questions.

However, Alderman _____ question was more specific. He has two Facebook pages. On one, he advertises ward events, like job fairs, and posts links to City operating departments (like the Departments of Planning & Development, Water Management, Streets & Sanitation, and Transportation), and his ward newsletter, many of which postings feature the City seal. (This site, we conclude, is and functions as an “official” City site, regardless of how it is funded.) He has another page that is for his re-election campaign, which does not display the City seal, but of course uses his title, “Alderman.” (This site includes political content, and a link for users to contribute to his re-election campaign – we conclude that it is “political” and subject to the conditions described two paragraphs below and in section III.B, above).

His question: a local business is hosting a free shredding event, and he knows it is of interest to his constituents. May he post a notice advertising the event on *both of these* pages?

The answer: it depends. We advise that, if he received notice of this event as alderman, and no other residents or campaign opponents received notice of the event, then he cannot post it on his political page (but of course can post it on his “official page”). However, if the event is in fact advertised by its host on

⁷ An already-settled question is whether a City elected official can include the City seal or other indicia of an official City or ward social media platform (like Facebook or Twitter) on a “political/campaign” or “personal” website or social media account. In Case No. 15014.C, we issued a letter of admonition to an alderman whose campaign-funded website had become “in effect, a City or ward website” precisely because it had all the indicia of an official City/ward site,” but it also included a button for making campaign donations. This was a problem. On the Board’s advice, the alderman immediately removed the donation button from this website, and placed it on his campaign website. The Board determined that having this political contribution button on the site – which he thought of as his campaign-funded, “personal” website – but which included the City seal, links for residents or other users to request City services, information about ward nights, and news – constituted an improper use of City-owned property for political purposes in violation of §2-156-060 of the Ordinance (prohibiting unauthorized use of City-owned property), and created the impression that the City officially supported the alderman’s candidacy, in violation of §2-156-135(b) of the Ordinance (prohibiting the use of City property or resources for any prohibited political activity). The Board advised the alderman that, if a website/social media account includes “the City seal and/or other indicia of an official City or ward website,” it cannot include electioneering content and may have no links to a political committee or links for making campaign donations, even when the site is fully campaign-funded and includes any legally mandated language about its funding. See <https://www.chicago.gov/content/dam/city/depts/ethics/general/AOMinorViolations/15014.mem.doc>.

More recently, in Case No. 18036.A1, the Board recently determined that *no person* may use the City seal in any printed, filmed, broadcast or web-based electioneering communications supporting a candidate for City office, unless the appropriate City authorities specifically authorize it, by ordinance or licensing agreement. See https://www.cityofchicago.org/content/dam/city/depts/ethics/general/AO_PolActvty/18036.A.1.pdf.

(but of course can post it on his “official page”). However, if the event is in fact advertised by its host on the host’s own social media pages, or through mass media like hyper-local newspapers, websites, radio, etc., then the alderman may use it on *both* pages – as could his election opponents, as it’s public information.

More generally, we reiterate the principle that aldermens’ “personal” or “political/campaign” social media pages or websites may include content regarding City/ward business, provided these pages or sites: (i) are not funded or maintained with City resources; (ii) do not use or display the City seal or any likeness thereof; (iii) do not take on the character of an “official” City website or page, such as including the City seal or links to the City’s website or City services in such a manner as users could reasonably think it is a City page; (iv) may have newsworthy content (for example, they may have photos of the alderman participating in ground-breaking ceremonies for new construction in the ward with other elected officials and business leaders, or discuss how many miles of streets or water mains have been improved during the alderman’s term, or other achievements the alderman has had while in office), with links to an official City site to back up such claims (*e.g.*, a link to a bulletin from the website of the Chicago Department of Transportation); and (v) state clearly and prominently that the sites are the aldermens’ (or employee’s or other official’s) own personal or political/campaign website or social media page and do not represent the official views of the City.⁸

We have also been asked whether aldermen can convert their pre-existing “personal” social media accounts to a political/campaign account. Our advice is that, if the “personal” pages or accounts have displayed links to City services, or ward events, ward newsletters, or other indicia of an “official” account (see Case No. 15014.C, discussed in fn. 7), then the aldermen may *not* convert those accounts into political/campaign pages or accounts, which would thereby in effect convert these pages’ subscribers, followers or friends and their contact information to what would now be a political/campaign account.⁹

D. Posting Political Photos; Blocking or “Defriending” Users. Following the budget hearing, Alderman shared her Facebook page with the Board’s Executive Director. The page has announcements and photos of her appearing as alderman at various public events, and photos of her appearing with other politicians. It also has City service announcements on it, as well as her official reaction as alderman to the Van Dyke verdict,¹⁰ and links to her ward newsletter. She asked whether: (i) she can post her political endorsements on this page; and (ii) whether she can block/defriend followers who have posted profanity and/or called her racist or other offensive names on the page. As we explain, our answers are: (i) no: we advise creating a third purely “political/campaign” page or account to do this; and (ii) users or followers can be deleted or blocked only under rare circumstances.

i. Political photos or other political content. First, we address whether elected officials can post political endorsements or other political content on “personal” social media pages or platforms like this one, which is not purely “official” or purely “political.” The Board has consistently advised City elected officials that they may share political content on their *personal* or *political/campaign* accounts.¹¹ Posting political

⁸ The Board advises that disclaimers must be prominent, written in a font that is easily legible, and in a color that contrasts with the background, following the example of the City of Los Angeles. See LAMC § 49.7.34(A): https://ethics.lacity.org/wp-content/uploads/2018/02/law_CFO_2017.pdf

⁹ Analogously, our colleagues at the New York City Conflicts of Interest Board have determined that a list of contact information maintained by an elected official’s City office to disseminate official City communications is a City resource and therefore cannot be used for any non-City purpose. They have also said, and we agree, that the opposite transfer is allowable: an elected official may accept from his or her campaign the campaign-maintained list of email addresses or contact information and use this in pursuit of his or her own official City duties. See COIB Advisory Opinion No. 2017-4, at 8-9, <https://www1.nyc.gov/assets/coib/downloads/pdf5/aos/2017/AO2017-4.pdf>. See also Handbook, at 4.4.1.

¹⁰ See <https://www.chicagotribune.com/news/local/breaking/ct-met-laquan-mcdonald-jason-van-dyke-trial-verdict-20181005-story.html>

¹¹ Similarly, in Advisory Opinion 11-02E, the Seattle Ethics and Elections Commission determined that if a public official maintains a personal social media account, and does not provide links to these platforms from a City social media account or other City communication, then the official can post political or electioneering material to the site. <http://www.seattle.gov/ethics/etpub/pdfs/1102e.pdf>

See also New York Conflicts of Interest Board Advisory Opinion No. 2017-1 (Revised), in which the Board explained that although the endorsement of candidates for elective office is a political activity, a City official may use his or her City title in connection with the endorsement of

content (such as endorsements for upcoming elections for public office, sample ballots, political party-based messages, links for users to make political contributions, *etc.*), however, is not the same as maintaining a personal, non-official social media account, such as the one our Executive Director reviewed, that *de facto* includes governmental information, *e.g.*, a calendar of job fairs and ward nights, and/or posts promoting such events and otherwise publicizing City services – because the public will reasonably view this kind of “personal” page as directly related to the official’s performance of their governmental duties. Put another way, these “personal” pages will either tend toward being an “official” page (as in Case No. 15014.C), or a “political/campaign” page, depending on the bulk of the content on the page.

Accordingly, if an alderman wishes to maintain such a “personal page,” we advise that he or she in effect have three (3) distinct social media pages:

(1) one that is purely political/campaign-related, and may include political or electioneering content such as endorsements, political advertisements, party-supplied content, sample ballots, links for campaign donations, or other kinds of electioneering communications or postings (note: this page may identify the alderman as an alderman, and may also include factual statements about the alderman’s accomplishments in office, and photographs of the alderman at ground-breaking ceremonies, *e.g.*, *but no images or likenesses of the official City seal* (per Board Case No. 18036.A1, cited in fn. 7, above)), and of course, this page may not be funded with City money, and City employees or campaign staff may not maintain this kind of page on or with City property, such as during compensated City time or in or with City offices, computers, smart phones, *etc.*;

(2) a second, “personal page,” that *could* include governmental information, such as photographs of the alderman in his or her capacity as alderman, or even the City seal, and links to City services or operating departments, but if it does, then it may NOT include electioneering content; and

(3) should the alderman wish, a third, “official” City site, that can be funded with City (or political¹²) money, with the assistance of professionals at the City’s Department of Innovation and Technology, and that can display all official City insignia, including the City seal, and have links to City departments, but may NOT have any electioneering content on it.

In all cases, aldermen should take reasonable steps to ensure that shared content avoids creating the impression that a political/campaign or “personal” account is a City resource or an official City account. Further, as we have advised informally, but now formally: an “official” City site *cannot* include links and/or information regarding an alderman’s political/campaign social media pages, nor even a disclaimer that the page is an official City page, not a political/campaign page, nor a link re-directing users to the political/campaign page.

ii. Blocking or deleting comments, friends or followers. Second, we address whether and to what extent elected officials can block and/or delete followers or “friends” and/or delete comments. We first note that this is a fluid area of the law. In a case that centers on the issue of how the First Amendment applies to social media platforms used by government officials to interact with people, *Knight First Amendment Institute v. Trump*, 302 F.Supp.3d 541 (S.D.N.Y. 2018), *appeal filed*, Dkt. No. 18-1691 (2d Cir. June 5, 2018),¹³ a New York federal district court recently ruled that, when an elected official uses a personal

candidates for elective office. Accordingly, an elected official may speak as an elected official on his or her personal social media account. https://www1.nyc.gov/assets/coib/downloads/pdf5/aos/2017/AO2017_1.pdf

¹² We note here the Illinois Election Code specifically authorizes City elected officials (and other elected officials in the State) to use funds from their official candidate committees “to defray the customary and reasonable expenses . . . in connection with [their] performance of governmental and public service functions.” See 10 ILCS 5/9-8.10(c). How a site is funded does not determine whether it is a “City,” “personal” or “political/campaign” site. Only its content is relevant in making that determination, and thus which postings can or cannot be made on them.

¹³ The U.S. Department of Justice has appealed the Second Circuit’s ruling and the appeal is pending.

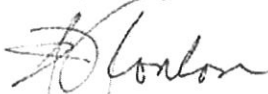
account to take or describe actions in his or her official capacity, the account becomes a public forum. Thus, comments posted to this type of account are protected by the First Amendment and cannot be deleted, and those commenting cannot be blocked from accessing the account. In *Knight*, the plaintiffs were seven (7) individuals who were blocked by President Trump from viewing or responding to tweets from his "personal" Twitter account.¹⁴ The plaintiffs argued that, by blocking people from reading his tweets, or from viewing and replying to message chains based on them, the President violated their First Amendment rights because they expressed views he did not like. The District Court agreed, holding that the President's actions in barring access of users to his account were the result of viewpoint discrimination in violation of the First Amendment. The case is on appeal to the Second Circuit.

Accordingly, the Board advises that elected officials whose "personal" account includes postings commenting on public affairs or matters involving City government, **should not** block followers from accessing such pages or delete critical comments, **unless** the user's comments are obscene, profane, libelous or defamatory, or are commercial and posted to sell goods or services.¹⁵ Moreover, we strongly recommend that personal accounts (and of course political/campaign accounts) that include political content include a policy, visible on the main page, outlining posting guidelines and explaining that postings are moderated and what types of comments will be deleted. However, if an alderman's personal account does not include content related to political/campaign or official City business, but is truly "personal," with postings only about non-work related matters like the official's family, vacations, favorite movies, restaurants, sports teams' performance, etc., then the official is **not** required to provide access to all members of the public, and nothing in the Ordinance prohibits the official from blocking or deleting comments, users, or followers. We express no opinion regarding whether users can be blocked or deleted from purely political/campaign pages or accounts, as that is beyond the purview of this Board or the Ordinance. We urge those maintaining such sites to consult with qualified counsel before blocking or deleting users.

Finally, regardless of the type of social media account at issue, the Board urges that all posted content be true and accurate to the best of the poster's knowledge.

IV. Conclusion

The Board's conclusions and advice are based solely on the application of the Ethics Ordinance to the situations and facts described in it. Other laws and/or regulations may apply. As the issues surrounding social media are often fact-specific, we urge Chicago's elected officials to seek confidential guidance from Board staff with any questions they may have about social media use and the appropriateness of a specific posting.



William F. Conlon
Board Chair

¹⁴ The Twitter handle at issue is @realDonaldTrump.

¹⁵ See also Seattle Ethics and Elections Commission, Opinion 11-02E: <http://www.seattle.gov/ethics/etpub/pdfs/1102e.pdf>