



**City Council Work Session
Tuesday, February 4, 2025 at 6:00 PM
Public Meeting Room**

AGENDA

1. Call to Order

2. Items for Discussion

- A. Proposal for Voluntary Private Ash Tree Removal Program
- B. Recommendation for Strategic Plan Consultant
- C. Provide Direction on Rebound's Request for a Preliminary Development Agreement Extension related to the City's Riverchase Property
- D. Social Media Policy Discussion
- E. Honorary Councilmember Program Discussion
- F. Residents Academy Program Discussion

3. Future Discussion

4. Adjournment

(The Council may meet as a group for dinner)

Please contact the City Administrator's Office if you need special accommodations while attending this meeting.

Para pedir este documento en otro idioma, envíe un correo electrónico y adjunte el documento a accessibility@faribault.org.

Si aad u codsato dukumeentigan oo ku qoran luqad kale, fadlan e-mail u soo dir oo ku soo lifaaq dukumiintiga accessibility@faribault.org.



Council Work Session Memorandum

TO: Mayor and City Council
THROUGH: Jessica Kinser, City Administrator
FROM:
MEETING DATE: February 4, 2025
SUBJECT: Proposal for Voluntary Private Ash Tree Removal Program

Discussion:

Emerald ash borer (EAB), an invasive forest insect from Asia responsible for the death of millions of ash trees throughout the United States, was first detected in Faribault in January 2021. Since then, the disease has continued to wreak havoc amongst the City's tree canopy, with nearly all non-treated ash trees showing significant signs of decay, leading to a decrease in property values and increased health and safety hazards for residents. The visual evidence of the disease's local impacts is clear considering the City's tree inventory indicates nearly one-third of our canopy is ash. While the Parks Division has been busy removing, and when appropriate, replacing ash trees on City-owned land, the City is aware of the significant cost barriers that prohibit property owners from removing dead or diseased trees.

There are a number of dead and diseased trees on private property and adjacent right-of-way, which per City Code are the responsibility of the property owner. A number of owners have contacted the City about assistance removing trees. While paying for removal on private property is not an option at this point, the City is able to treat this as a voluntary special assessment, as is done for private water or sewer line repairs. Through a multi-department effort, we are proposing to offer a voluntary special assessment program for property owners that have an ash tree(s) that should be removed to sign a consent and waiver form to allow for the costs of the removal to be specially assessed against the property over 5 years (Code section 26-26). Per legal counsel, the removal of stumps can also be included as part of a property owner's work as a health and safety and blight reduction measure.

PROCESS

1. Interest/Intake and Site Assessment

The Parks and Recreation Department would serve as the first point of

contact for property owners. A form would need to be completed (online or emailed/mailed/dropped off) to provide information for Parks staff to go to the property and identify the tree(s) and confirm if a tree is diseased or dead. They would take a measurement of the diameter at breast height (DBH), mark the trees, and complete a basic site assessment to identify conditions that could be problematic for removal like power lines, fences, proximity to the house, etc. They will also note any sidewalk issues caused by the existing tree, which can then become part of the special assessment scope of work.

2. Consent & Waiver

Parks and Recreation will share information with Public Works Administration to coordinate the collection of signatures of consent and waiver forms. Scott Riggs is working on a revised form which should be available by the meeting date for further discussion. Property owners would need to commit to this early on in the process before bids had been obtained, as participation in the voluntary program is going to determine the scope of work in a bid process.

3. Bid Process and Contracting

Public Works would use the data collected by Parks to develop a Request for Quotes (RFQ). PW would also issue the RFQ and prepare the Council documents and contract to award a bid.

4. Tree Removal

Public Works staff will oversee the contracted scope of work and inspect a contractor's work for completeness. Public Works will also approve payment requests.

5. Special Assessment

Public Works and the Finance Department will work together to have a special assessment file approved by the City Council at the first meeting in November. That file has to then be submitted to the County no later than November 30th in order for the first year's assessment to appear on the 2026 property taxes.

TIMELINE

There is not a lot of time to get from tree identification to special assessment, but it is possible to complete. We are proposing the following timeline for this process to be completed:

- May 16th- Deadline for property owners to submit request to City to be part of voluntary assessment
- June 9th- Request for quote issued
- July 7th- Request for quote due
- July 15th- Special City Council meeting following work session to award bid/contract; contractor can start work as soon as all contract paperwork is complete.

- October 31st- All tree removal complete and final billing to be submitted to the City shortly thereafter
- November 12th- Council adopts assessment schedule; staff will submit to County following this action for first year assessment with 2026

The intent is to keep this a voluntary program for 2025. The non-voluntary special assessment process requires more notice and action by Council that would reduce the amount of time a contractor had to complete the work. However, this is likely to be utilized in future years.

OTHER CONSIDERATIONS

There are a number of things that go into a large effort like this for the City Council to consider.

- **Funding-** It is hard to guess on the cost of a project like this, which the city would pay up front and then be reimbursed with interest from the special assessment process over 5 years. Assuming we are less than \$400,000 (which seems high), we would likely fund through an internal loan from the Sewer Fund in order to pay for the project. If the cost is less, there are other internal sources that we can look at as well.
- **EDA and/or HRA Participation-** Should the Council want to proceed with a voluntary program, Dave Wanberg will take this information to both of the February meetings. Both entities have funds for 2025 earmarked for gateway improvements. Either group could decide to participate in any way and staff would determine how to best communicate that information.
- **Communication-** Advertising this voluntary program will be key to a successful use of the special assessment tool. While Parks and Rec has a list of individuals to reach out to and traditional media sources will be useful, there might be a time to consider doing a mass mailing to specific neighborhoods or corridors to help garner interest.

If the City Council would like to proceed with this, staff stands ready for this challenge. There is a direct impact on not only the safety of the community from hazardous trees, but also on the quality of life of all Faribault residents.

Attachments:



Council Work Session Memorandum

TO: Mayor and City Council
THROUGH: Jessica Kinser, City Administrator
FROM:
MEETING DATE: February 4, 2025
SUBJECT: Recommendation for Strategic Plan Consultant

Discussion:

The 2025 budget includes \$25,000 for hiring a consultant to work the City's elected officials and staff as well as the HRA and EDA to come up with a strategic plan. This is not a replacement of CV2040, but is meant to supplement CV2040 and have more of a focus that will help guide the City Council and staff in making budgetary and operational decisions. The RFP is attached to help you understand the scope of work.

Seven responses were received. A team consisting of Dave Wanberg, Delane James, John Sherwin, and Brad Phenow are evaluating the proposals over the weekend and will have a recommendation available before the meeting. The packet will be updated to reflect the recommendation prior to Tuesday.

Attachments:

1. City of Faribault.RFP Strategic Planning Consultant Jan 2025



REQUEST FOR PROPOSAL

STRATEGIC PLANNING CONSULTANT

RESPONSES DUE
JANUARY 30, 2025 at 12PM CST

INTRODUCTION & SUMMARY

The City of Faribault is seeking a consultant to help develop a multi-year strategic plan through facilitated discussions. This plan will also involve the Faribault Housing & Redevelopment Authority (HRA) and the Faribault Economic Development Authority (EDA), and seek to provide role clarity and alignment among the organizations as it relates to priorities and use of funds toward common goals.

The City of Faribault has a strong background of planning for the future. The City of Faribault worked collectively with community partners in 2015 to develop Community Vision 2040 (CV 2040), a Comprehensive Plan update that also involved the creation of a Downtown Master Plan and a Park, Trails, and Open Space Plan. CV 2040 identified six strategic priorities for the community, which were then developed into a list of goals and key initiatives to be undertaken in short, medium- and long-term timeframes. These priorities as well as the goals and initiatives have formed the framework for the City of Faribault's strategic planning efforts for a number of years. The final plan can be found at <https://www.ci.faribault.mn.us/165/Community-Vision-2040> and information about the process can be found at <https://www.ci.faribault.mn.us/605/Journey-to-2040>.

ORGANIZATION BACKGROUND

Faribault is built along the banks of the Straight and Cannon Rivers, two tributaries that played a vital role in the city's early development. It was the opportunity to fur trade with the Dakota Sioux Indians living along these rivers that brought Alexander Faribault, the city's French-Canadian founder, to this area in 1826. Faribault is a historic community that takes pride in its history, but is also embracing the ever-changing demographics. With a population of 24,000, the community is seeing increasing numbers of Somali and Spanish-speaking residents, changing how communication and services are provided.

The City of Faribault operates under a home rule charter adopted in 1975 and has operated under a Council/Administrator form of government. The Faribault City Council is charged with exercising legislative power and determining local policy, including passing ordinances, adopting the budget, appointing committees, and approving certain personnel actions as authorized in the City Charter and negotiated personnel contracts. The City Administrator is the Chief Administrative Officer directly accountable to the City Council for all matters of municipal operation. The Council is comprised of the Mayor, who serves a four-year term of office, and six City Council members, who serve staggered four-year terms. All members are elected at-large.

The City of Faribault provides a full range of services, including police and fire protection; the construction and maintenance of highways, streets, and other infrastructure; airport services; culture and recreational activities; and general administrative services. Attachment A provides a brief description of each department and services provided.

In addition to the City of Faribault, there are also two component units of the City which receive tax dollars levied by the Mayor and City Council. Alignment with the Faribault HRA and Faribault EDA has not always been a priority from a planning standpoint, but there are multiple initiatives that have required joint cooperation of the three entities. Below is a brief description of the HRA and the EDA.

Faribault HRA

The HRA is an independent board of the City of Faribault and is its own separate organization. The board is composed of six members (plus one Council representative) that are appointed by the Mayor and City Council to terms of staggered five years. The City employs an HRA Executive Director in the Community and Economic Development Department that provides administrative services and oversight to the HRA and its functions.

The HRA is the owner of multiple housing units for income-qualified individuals. Robinwood Manor is a 51-unit senior housing facility which will undergo a transition of ownership in 2025. The HRA will continue to own 49 housing units known as the scattered sites.

In addition, the Faribault HRA receives a tax allocation as approved by the City Council as part of the annual budget process to provide funding for different special programs throughout the year. Some of the approved special programs for 2025 include the following:

- Manufactured home rehabilitation program;
- Owner-occupied single-family residential rehabilitation program;
- Down payment assistance program;
- Funding to support apartment development above downtown businesses; and
- Emergency shelter funding.

Faribault EDA

The EDA is an independent board of the City of Faribault but does not have a separate tax ID. The board is composed of five members (plus two Council representatives) that are appointed by the Mayor and City Council to terms of six years. The City employs an Economic Development Coordinator in the Community and Economic Development Department that provides administrative services and oversight to the EDA and its functions, including providing technical and financial assistance programs to promote business retention, expansion, and attraction, including a Downtown Commercial Rehabilitation and Exterior Improvement Fund, an Economic Development Incentive Fund (EDIF), Revolving Loan Funds supporting commercial and industrial developments, and several community partnerships related to Main Street programming, public arts, and workforce development.

The EDA and the City Council work cooperatively on the providing and approval of incentives for new projects or expansions related to business and industry. In addition, the Faribault EDA receives a tax allocation as approved by the City Council as part of the annual budget process to provide funding for different special programs throughout the year. The core focus areas of the Faribault Economic Development Authority (EDA) include:

- Identify underutilized land, catalyst sites, and land assembly opportunities;
- Develop and implement gateway enhancement programs;
- Define and market Faribault's place in the region and global economies;
- Work with businesses and others to address staffing issues; and

- Identify ways to attract small businesses and ensure resources and programs are clear and accessible.

SCOPE OF WORK

The City of Faribault is seeking a consultant to carry out a process to develop an organizational strategic plan for the City. While the CV 2040 provided extensive goals and initiatives for the community at large, the plan did not take into consideration the singular organizational approach the City takes in its planning and operation. As a result, the consultant will be tasked with carrying out a process where by the City of Faribault and its City Council focus on the City as an organization and identify City-centric plan in alignment with the CV 2040. This work will also include working with the City representatives on a review and update of the City Vision and Community Values which the organization has previously adopted. These items were considered after the adoption of CV 2040 and should be reviewed to ensure they fit the City organization.

This work should seek to involve the HRA and EDA to the extent necessary to understand roles and responsibilities and to achieve organizational alignment. The scope of work does not include the development of strategic plans for the HRA and EDA, but proposals can be submitted to each organization as part of this process.

Given the extensive work on CV 2040 and the large amount of community involvement in the community plan, it is contemplated that this planning effort be focused more on the City of Faribault and elected officials, boards and commissions, and staff as part of the development process. If public input is proposed as part of the process, it is recommended that this be collected as part of ongoing public engagement processes like Council Chats.

The City of Faribault has budgeted \$25,000 in 2025 to complete a strategic planning process with the scope of work noted above.

TIMELINE

The first draft of a strategic plan should be available by June 30, 2025. The City begins its budget planning for the following year in July, and a draft of the plan is desired by that time to help provide strategic direction related to the priorities for the 2026 and future budget processes. Final adoption of the plan should be accomplished by September 30, 2025.

The City Council meets on the first and third Tuesdays of each month in a work session setting, which can be utilized as part of the strategic planning process. The City Council meets formally for a business meeting on the second and fourth Tuesdays of each month, which is where formal approval of a plan would occur. The 2025 calendar includes multiple months with five Tuesdays for which no meeting is scheduled. The exception is Tuesday, April 29, 2025, when an afternoon/evening Annual Retreat is scheduled with the City Council and can be utilized as part of the planning process.

APPLICATION AND SELECTION PROCESS

Qualified consultants should submit a comprehensive proposal which contains the following elements:

- Overview of firm and qualifications
- Proposed process for developing a City of Faribault strategic plan (deliverable)
- Timeline for completing the strategic planning process
- Proposed pricing for completing the scope of work
- Three similar clients/projects as references with contact information

Responses to this RFP are due by January 30, 2025, at 12pm CST. Responses may be emailed to jkinser@ci.faribault.mn.us or mailed to the following address:

City of Faribault
Attn: City Administrator
208 NW 1st Avenue
Faribault, MN 55021

Proposals are not required to be sealed. Proposals will not be returned. The proposal is considered a public record and will be included as an attachment to the contract document.

An internal review will take place with a recommendation to go to the City Council work session on February 4, 2025, with the intent to approve a contract at the February 11th City Council meeting.

Please direct all questions to Jessica Kinser, City Administrator, at jkinser@ci.faribault.mn.us.

TERMS AND CONDITIONS

If selected, the City would require the consultant to execute the attached Professional Services Agreement on the following pages.

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "Agreement") is made this ____ day of _____, _____ by and between the City of Faribault, a Minnesota municipal corporation located at 208 1st Avenue NW, Faribault, MN 55021 (the "City"), and _____, a _____ organized under the laws of the State of _____ and located at _____ (the "Contractor").

- I. SERVICES TO BE PROVIDED.** The Contractor will perform for the City the services as specified in its proposal which is incorporated into this Agreement as Exhibit A (the "Proposal"). All professional services provided by the Contractor under this Agreement shall be provided in a manner consistent with the level of care and skill ordinarily exercised by professional consultants currently providing similar services.
- II. COST OF SERVICES.** For the tasks outlined in the Proposal, the City shall pay the Contractor a fee of \$ _____ (the "Professional Fee"). The Professional Fee includes all professional services and all expenses related to the Proposal. The City shall not be responsible for payment for any additional work performed by the Contractor that is not expressly listed on the Proposal or otherwise pre-approved by the City in writing. The Contractor shall submit itemized invoices for the services it provides to the City on a monthly basis. The itemized invoices shall clearly identify all work completed. Invoices submitted will be processed and paid in the same manner as other claims made to the City. The sum stipulated for services shall be considered an "Hourly-Not to Exceed" cost to the City, subject only to adjustments for changes in scope of services performed.
- III. TERMINATION OF AGREEMENT.** Notwithstanding any other provision herein to the contrary, this Agreement may be terminated as follows: (1) the parties, by mutual written agreement, may terminate this Agreement at any time; (2) the Contractor may terminate this Agreement in the event of a breach of the Agreement by the City, upon providing 30 days' written notice to the City; (3) the City may terminate this Agreement at any time at its option, for any reason or no reason at all.
- IV. INDEPENDENT CONTRACTOR.** All services provided pursuant to this Agreement shall be provided by the Contractor as an independent contractor and not as an employee of the City for any purpose. Any and all officers, employees, subcontractors, and agents of the Contractor, or any other person engaged by the Contractor in the performance of work or services pursuant to this Agreement, shall not be considered employees of the City. Any and all actions which arise as a consequence of any act or omission on the part of the Contractor, its officers, employees, subcontractors, or agents, or other persons engaged by the Contractor in the performance of work or services pursuant to this Agreement, shall not be the obligation or responsibility of the City. The Contractor, its officers, employees, subcontractors, or agents shall not be entitled to any of the rights, privileges, or benefits of the City's employees, except as otherwise stated herein.

- V. **INDEMNIFICATION.** The Contractor, and any and all officers, employees, subcontractors, and agents of the Contractor, or any other person engaged by the Contractor in the performance of work or services pursuant to this Agreement, shall indemnify, defend, and hold harmless the City and its officials, employees, contractors, and agents from any loss, claim, liability, and expense (including reasonable attorneys' fees and expenses of litigation) arising from, or based in the whole, or in any part, on any negligent act or omission by the Contractor, its officers, employees, subcontractors, and agents, or any other person engaged by the Contractor in the performance of work or services pursuant to this Agreement. In no event shall the City be liable to the Contractor for consequential, incidental, indirect, special, or punitive damages. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the City is entitled under Minnesota Statutes, Chapter 466 or otherwise.
- VI. **INSURANCE.** The Contractor agrees that before any of the services can be performed hereunder, the Contractor shall procure at a minimum: worker's compensation Insurance as required by Minnesota state law; professional liability in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate; and commercial general liability in an amount of not less than \$1,500,000.00 per occurrence for bodily injury or death arising out of each occurrence, and \$1,500,000.00 per occurrence for property damage. To meet the commercial general liability requirements, the Contractor may use a combination of excess and umbrella coverage. The Contractor shall provide the City with a current certificate of insurance listing the City as an additional insured with respect to the commercial general liability and umbrella or excess liability. Such certificate of liability insurance shall contain a statement that such policies shall not be canceled or amended unless 30 days' written notice is provided to the City, 10 days' written notice in the case of non- payment. **[The coverages required may need to be revised on a case-by-case basis depending on the nature of the services and professional liability insurance may need to be added].**
- VII. **CONFLICT OF INTEREST.** The Contractor shall use best efforts to meet all professional obligations to avoid conflicts of interest and appearances of impropriety.
- VIII. **THIRD PARTY RIGHTS.** The Parties to this Agreement do not intend to confer on any third party any rights under this Agreement.
- IX. **NOTICES.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, first class and postage fully prepaid, and addressed to the addresses above, or at such other address as either party may provide to the other by notice given in accordance with this provision.
- X. **MISCELLANEOUS PROVISIONS.**
- A. **Entire Agreement.** This Agreement shall constitute the entire agreement between the City and the Contractor, and supersedes any other written or oral agreements between the City and the Contractor. This Agreement can only be modified in writing signed by the City and the Contractor.
- B. **Data Practices Act Compliance.** Data provided, produced or obtained under this Agreement shall be administered in accordance with the Minnesota Government

Data Practices Act, Minnesota Statutes Chapter 13. The Contractor will immediately report to the City any requests from third parties for information relating to this Agreement. The Contractor agrees to promptly respond to inquiries from the City concerning data requests.

- C. **Audit.** The Contractor must allow the City, or its duly authorized agents, and the state auditor or legislative auditor reasonable access to the Contractor's books, records, documents, and accounting procedures and practices that are pertinent to all Services provided under this Agreement for a minimum of six years from the termination of this Agreement.
- D. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of Minnesota. Any disputes, controversies, or claims arising under this Agreement shall be heard in the state or federal courts of Minnesota and the parties waive any objections to jurisdiction.
- E. **No Assignment.** This Agreement may not be assigned by either party without the written consent of the other party.
- F. **No Discrimination.** The Contractor agrees not to discriminate in providing products and services under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion.
- G. **Agreement Not Exclusive.** The City retains the right to hire other additional contractors in the City's sole discretion.
- H. **Severability.** The provisions of this Agreement are severable. If any portion of this Agreement is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision will not affect the remaining provisions of the Agreement.
- I. **Waiver.** Any waiver by either party of a breach of any provision of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.
- J. **Compliance with Laws.** The Contractor shall exercise due professional care to comply with applicable federal, state, and local laws, statutes, rules, ordinances, and regulations in effect as of the date the Contractor agrees to provide the applicable services detailed in Exhibit A.
- K. **Headings.** The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit, or affect the scope and intent of this Agreement.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement as of the date first written above.

THE CITY OF FARIBAULT:

By: _____

Its: Mayor

Date: _____

By: _____

Its: City Administrator

Date: _____

CONTRACTOR:

By: _____

Its: _____

Date: _____

EXHIBIT A

Departments of the City of Faribault

Administration provides the administrative direction for the City. The City Administrator serves as chief administrative officer for the City and reports to the Mayor and City Council. The City Administrator is also responsible for managing the overall operation of all city departments, ensuring that the charter, laws, ordinances, and resolutions of the City Council are enforced and implemented. The City Clerk's responsibilities include the management of official records, licenses, elections and documents of the City. Management of City communications efforts and development and implementation of various communications strategies and programs was shifted to Administration in March of 2023.

Police Department is a full-service agency that protects human life and property by responding to emergency and nonemergency calls for service, enforces laws and ordinances, investigates crimes, apprehends criminals, provides proactive policing through education and crime prevention, and maintains order. In 2023, the department had a staff of 42 full-time employees and two part-time employees. Currently the police sworn staff comprises 35 of the 42 full-time positions. The department widely employs the use of citizen and neighborhood participation and partners with community organizations.

Fire & Code Services Department protects 126 square miles in the city and the three and one-half townships surrounding Faribault from the Fire Station located on the west side of downtown, adjacent to City Hall. The Department provides fire suppression, heavy and tactical rescue, and medical first response, along with fire prevention, public education, fire inspection and pre-plan programs. The Department employs nine (9) full-time and up to 26 paid on-call firefighters, a Fire Chief and a part-time administrative assistant. The Building Codes Division is responsible for inspections and functions related to building and electrical permit processing, rental housing registration program and property maintenance code enforcement.

Public Works Department provides for the operation and maintenance of the City's infrastructure systems and consists of multiple divisions which include Streets, Utilities, Water Reclamation Facility and Airport. Twenty-eight (28) full-time employees provide the department's service delivery, along with a number of seasonal staff. Faribault provides and operates the water and sanitary sewer utilities in the city. Operations of the Airport are managed by contracted services.

Community and Economic Development Department is comprised of four (4) separate divisions that are involved with every aspect of development within the city of Faribault. The department conducts City, HRA and EDA programming in the areas of housing, economic development, historic preservation, planning, and zoning, as well as primary administrative and technical support to many of the City's boards and commissions. The Planning and Zoning Division administers the City's land use planning program, including long range and current planning, annexations, subdivisions and development of land, environmental review, zoning and the Unified Development Ordinance.

Parks & Recreation Department manages City facilities, including the Community Center and Faribault Family Aquatic Center, and shares in the operation of the Faribault Soccer Complex. Amenities include gymnasiums, fitness center, sauna, and racquetball courts. Swim lessons and water aerobics are offered at the indoor pool. Facility rentals of the outdoor aquatic center, indoor pool, and park shelters are available. The department assists with community events, including Heritage Days, Pet Parade, and Blue Collar Festival. Parks & Recreation offers enrichment classes and programs for youth and adults, and publishes the Buckham Bulletin, a quarterly city newspaper. Parks & Recreation is located within the Buckham Center complex, which also houses the Buckham Memorial Library and Buckham West (Senior Center).

Library provides library services and materials including books, periodicals, A/V materials and online data/research resources. Basic activities include acquisition of materials, organization and circulation of materials, assistance in the use of materials, interlibrary loan services, reference and reader's advisory services, maintenance of library resources, children's and adult programming, public access to the Internet and promotion of the library to the public.

Finance provides financial support to the entire City government organization, Faribault Economic Development Authority and Faribault Housing and Redevelopment Authority. Finance also manages the areas of investments, insurance and risk management.

Engineering provides professional and technical expertise for the planning, design, construction, administration and maintenance of the infrastructure systems of the City.

Human Resources functions include recruitment and selection of employees, management of employee compensation agreements, state and federal mandates related to personnel issues, special training of employees, workers compensation, and maintenance of personnel files. Information Technologies provides for the implementation and management of IT infrastructure, manages ongoing daily "Helpdesk" operational support and maintenance of all IT systems, and coordinates IT equipment needs with departments for meetings, training and remote access.



SMALL TOWN PRIDE. BIG CITY OPPORTUNITY

CITY VISION

We embrace the future and plan for positive change through our commitment to innovation and excellence, making Faribault an outstanding place to live, work, grow, invest and visit.

COMMUNITY VALUES

SENSE OF COMMUNITY

We value a strong sense of community and belonging. We believe in being a friendly, respectful, safe, inclusive and welcoming community that celebrates strong connections among all people.

SENSE OF PLACE

We value and respect our historic character, iconic institutions, rich traditions, and natural amenities that give Faribault its unique sense of place.

OPPORTUNITY

We value the opportunities that all people have for growth and enrichment in our community, including opportunities for high-quality education, decent jobs, good housing, quality healthcare, and access to nature, leisure, and the arts.

INNOVATION

We value and encourage engagement, creativity, flexibility, and openness to new ideas and positive change in all sectors of our community, including business, industry, education, and government.

EXCELLENCE

We value excellence and strive for it in everything we do. We believe if it is worth doing, it is worth doing to the best of our ability.

UNITY

We value being a place where all people find opportunities to succeed, grow and prosper, and we celebrate our broad range of perspectives as unique strengths that allow our community to grow a sense of togetherness.



Council Work Session Memorandum

TO: Mayor and City Council
THROUGH: Jessica Kinser, City Administrator
FROM: David Wanberg, CED Director
MEETING DATE: February 4, 2025
SUBJECT: Provide Direction on Rebound's Request for a Preliminary Development Agreement Extension related to the City's Riverchase Property

Discussion:

The City of Faribault owns a vacant 2.69-acre parcel at 105 Riverchase Court that it has marketed for private development. At the City Council's January 16, 2024, work session, Rebound Real Estate, LLC presented a concept plan to develop a 41-unit, age-restricted apartment building and two twin homes on the property. On February 13, 2024, the City of Faribault and Rebound Real Estate, LLC, entered into a preliminary development agreement that allowed the parties one year to negotiate a purchase agreement related to the proposed development (see the attached preliminary development agreement).

Per the terms of the agreement, Rebound agreed to conduct a due diligence review of the property, obtain required City approvals, and, if desired, request business subsidy assistance. Although Rebound is still interested in developing the property, it is not yet prepared to enter into a purchase agreement with the City. Rebound requests the City Council grant a 180-day extension to the preliminary development agreement to allow Rebound sufficient time to determine the available TIF balance and finalize the project's underwriting and financing.

Without an extension to the current preliminary development agreement, neither the City nor Rebound has any obligations related to the agreement after February 12, 2025. Consequently, the City can allow the current preliminary agreement to expire and enter into a preliminary development agreement with another interested party. At least one other residential developer has expressed interest in the property. In addition, City Staff is meeting with several other residential developers interested in developing in Faribault who may be interested in the property.

If the City chooses to enter into a preliminary development agreement with

another developer, it may take that developer 180 days or more to conduct a due diligence review of the property. However, if the City Council chooses to extend the expiration date on the current preliminary development agreement with Rebound, the Council may want to limit the extension to 60 or 90 days. City Staff invited Rebound representatives to attend the Council's work session in case the Council has questions for Rebound. The City should encourage site development in 2025. If it takes Rebound 180 days to purchase (or to decide not to purchase) the property, it will likely delay development until 2026.

City Staff requests Council direction on Rebound's 180-day extension request. The Council has the following options:

1. Direct staff to prepare a resolution and extend the terms of the preliminary development agreement with Rebound an additional 180 days.
2. Direct staff to prepare a resolution and extend the terms of the preliminary development agreement with Rebound an additional 60 or 90 days.
3. Direct staff to prepare a resolution acknowledging the preliminary development agreement with Rebound is null and void effective February 13, 2025, and authorize staff to market the property to other developers.

Pending Council direction, Staff will bring an appropriate resolution for Council action on February 11, 2025.

Attachments:

1. Preliminary Development Agreement Expiring on February 12, 2025

PRELIMINARY DEVELOPMENT AGREEMENT

THIS AGREEMENT (the "Agreement"), made and entered into as of this 13th day of February, 2024 (the "Effective Date") by and between the City of Faribault, a Minnesota municipal corporation (the "City") and Rebound Real Estate, LLC, a Limited Liability Company, (the "Developer") or its assigns:

WITNESSETH:

WHEREAS, the City owns certain real property, which is located in Rice County, Minnesota, legally described on Exhibit A attached hereto and hereby made a part hereof, together with all rights, title and interest appurtenant thereto (the "Real Property"); and

WHEREAS, the City desires to promote development of the Real Property; and

WHEREAS, Developer intends to purchase the Real Property from the City and to develop a project on the Real Property (the "Development Property"); and

WHEREAS, Developer, or a special purpose entity to be formed by the Developer for the purpose of completing this project, has submitted or is in the process of submitting an updated proposal for development of a 55+ housing project generally consisting of a multi-story apartment building and two twinhome buildings (subject to Section 10 of this Agreement) on the Development Property (the "Development"), which proposal is attached hereto as Exhibit B and incorporated herein; and

WHEREAS, the City desires that the Development shall be completed in its entirety by the end of 2025; and

WHEREAS, the City and Developer are interested in discussing and further planning for the Developer's proposal for the Development; and

WHEREAS, the Developer has indicated that it will seek business subsidy assistance or financial incentives from the City to make the Development feasible; and

WHEREAS, the City will need to determine if various studies, as may be determined to be reasonably necessary, should be conducted, including without limitation an environmental impact or related study, an infrastructure feasibility study, an economic impact study, a traffic study, and any other studies which are either required by law or deemed appropriate by the City; and

WHEREAS, the City will continue to discuss and negotiate with the Developer

regarding the overall development of the Development Property; and

WHEREAS, the City is willing to discuss with the Developer any public subsidies which may be available for the Development, however, nothing herein shall be interpreted as an approval or guarantee of any future public financial assistance, including but not limited to tax increment financing, tax abatement, business subsidies, or any other public assistance authorized by law; and

WHEREAS, various ordinance, land use, zoning, and subdivision issues and actions related to the Development and the Development Property are required to be approved by the City in order to facilitate the Development by the Developer; and

WHEREAS, the City agrees to cooperate with the Developer to review and to assist the Developer, where deemed appropriate by the City, with obtaining various ordinance, land use, zoning, and subdivision approvals and actions related to the Development and the Development Property in order to facilitate the Development by the Developer, provided that nothing herein shall be interpreted as an approval or guarantee of any future land use, zoning, or other required City approvals; and

WHEREAS, the City is willing to consider and the Developer is desirous to undertake the Development if (i) a satisfactory agreement can be reached regarding the City's commitment for public costs, if any, necessary for the Development; (ii) satisfactory mortgage and equity financing, or adequate cash resources for the Development can be secured by Developer; and (iii) the feasibility and soundness of the Development and other necessary preconditions have been determined to the satisfaction of the parties.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and obligations set forth herein, the parties agree as follows:

1. Future Negotiations.

The parties agree to continue negotiations pursuant to the terms of this Agreement in an attempt to formulate a definitive plan for the Development and for a Purchase and Development Agreement and a Contract for Private Development based on the following:

- (a) Developer's proposal, which shows the scope of the proposed Development in its latest form as of the date of this Agreement, together with any changes or modifications required by the City;
- (b) Mutually-satisfactory (i) Purchase and Development Agreement, (ii) Contract for Private Development, and (iii) other agreements or contracts to be

negotiated and agreed upon in accordance with negotiations contemplated by this Agreement;

- (c) Mutually satisfactory terms for the Development that may be required for the Development (e.g. access and utility easements, allocation of infrastructure costs, etc.); and
- (d) Other terms and conditions of this Agreement.

2. Statement of Intent.

Although not conclusive or binding on either party, it is the intention of the parties that this Agreement: (a) documents the present understanding and commitments of the parties; and (b) will lead to the negotiation and execution of mutually-satisfactory Purchase and Development Agreement and a Contract for Private Development prior to the termination date of this Agreement. The Purchase and Development Agreement and the Contract for Private Development (together with any other agreements entered into between the parties hereto contemporaneously therewith) will supersede all obligations of the parties hereunder.

3. Term; Duties.

- (a) During the term of this Agreement, the City agrees to:
 - (i) Proceed to seek all necessary information with regard to the anticipated public costs, if any, associated with the Development; and
 - (ii) Permit Developer to conduct due diligence review of the Development Property including without limitation: title, survey, environmental (Phase I & Phase II reports), soils, and market studies; and
 - (iii) Should negotiations be successful, enter into a Purchase and Development Agreement and a Contract for Private Development that is satisfactory to the City in its sole discretion, with the Developer for the Development.
- (b) During the term of this Agreement, the Developer agrees to:
 - (i) Develop and submit its detailed proposal, including the plans and specifications, for purchase and development of the Development Property;

- (ii) Conduct a due diligence review of the Development Property, including without limitation: title, survey, environmental (Phase I & Phase II reports), soils, and market studies, which must be acceptable to the Developer in its sole discretion as determined necessary by the Developer beyond what the City has performed or is currently in the process of performing. The City will make available to the Developer any title, survey, and environmental, soils, and market studies in its possession. Developer shall be responsible for all costs for such due diligence review related to the Development Property and shall indemnify the City pursuant to Section 18 of this Agreement for any activities undertaken regarding the Development Property;
- (iii) Obtain approval by the City (including its Engineer, Planning, and Building Inspection, and any other governing authority) of the site plan, exterior elevations and finishes, and zoning and subdivision approvals;
- (iv) Obtain any other necessary governmental approval from any governing authority;
- (v) Obtain financing on terms acceptable to Developer, including but not limited to public subsidies (such as pay-as-you-go TIF in a mutually agreeable amount), private loans, tax credits, or equity investment(s); and
- (vi) Should negotiations be successful, enter into a Purchase and Development Agreement and a Contract for Private Development with the City for the Development.

4. Business Subsidies; TIF.

- (a) The City understands that the Developer may be seeking business subsidy assistance from the City. During the term of this Agreement, Developer shall:
 - (i) Submit to the City a design proposal to be reviewed by the City showing the location, size, and nature of the proposed Development, including layouts, renderings, elevations, and other graphic or written explanations of the Development. The design proposal shall be accompanied by a proposed schedule for the starting and completion of the Development;
 - (ii) Submit an over-all cost estimate for the design and construction of the Development;

- (iii) Submit a time schedule for the Development;
 - (iv) Undertake and obtain such other preliminary economic feasibility studies, income and expense projections, and such other economic information as Developer may desire to further confirm the economic feasibility and soundness of the Development;
 - (v) Submit to the City the Developer's financing plan showing that the proposed Development is financially feasible;
 - (vi) Furnish satisfactory financial data to the City evidencing Developer's ability to undertake the Development; and
 - (vii) Furnish information in its possession and assist the City with obtaining all available business subsidy assistance that the City may deem appropriate.
- (b) Developer understands that the Tax Increment Financing sought for the proposed Development must be obtained as outlined by law.

5. Feasibility.

It is expressly understood that execution and implementation of any Purchase and Development Agreement and Contract for Private Development (together with any other agreements entered into between the parties hereto contemporaneously therewith) shall be subject to:

- (a) A determination by the City in its sole discretion that its undertakings are feasible based on (i) satisfaction of City Code requirements; (ii) the purposes and objectives of any development plan created or proposed for the Development; (iii) the Studies, if any; and (iv) the best interests of the City.
- (b) A determination by Developer that the Development is feasible and in the best interests of Developer.

6. Effective Date; Expiration.

This Agreement is effective from the Effective Date until one (1) year after the Effective Date. After such date, neither party shall have any obligation hereunder except as expressly set forth to the contrary herein.

7. Costs; Escrow.

Developer shall be solely responsible for all costs incurred by Developer. In addition, upon the Developer's submission of applications for the Development, the Developer shall provide the City with applicable non-refundable application fees and escrows for the City's evaluation of the Developer's Development proposal, which shall be determined at the time of submission of such applications.

8. Termination.

This Agreement may be terminated if Developer ceases to negotiate in good faith with the City, and such failure to negotiate in good faith is not cured after 30 days written notice of such failure by City to Developer.

9. Sole Developer.

The Developer is designated as sole developer and shall have exclusive rights of the Development of the Property for a period on one (1) year from the Effective Date (the "Term"). The City agrees not to market the Property or to make, accept, negotiate, or otherwise pursue any other offers for sale or purchase of the Development Property until the Term of this Agreement expires or the Agreement is terminated pursuant to Section 8 herein.

For purposes of negotiation clarity, the Developer, or its assign, designates Jim Gooley as the point person and main contact for purposes of the Developer's activities and negotiation regarding the Development.

10. Proposed Development – 55+ Housing Project.

Notwithstanding anything herein to the contrary, the City acknowledges that the number of residential units and the design of the buildings for the Development have not been finally determined by the Developer. Developer, or a special purpose entity to be formed by the Developer for the purpose of completing the Development, has submitted or is in the process of submitting an updated proposal for development of a 55+ housing project generally consisting of a multi-story apartment building and two twinhome buildings on the Development Property, which proposal is attached hereto as Exhibit B and incorporated herein.

11. Severability.

If any portion of this Agreement is held invalid by a court of competent jurisdiction, such decision shall not affect the validity of any remaining portion of the Agreement.

12. Breach Waiver.

In the event any covenant contained in this Agreement should be breached by one party and subsequently waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous, or subsequent breach.

13. Notice.

Notice, demand, or other communication between or among the parties shall be sufficiently given if sent by mail, postage prepaid, return receipt requested or delivered personally:

(a) As to City: City of Faribault
208 1st Avenue NW
Faribault, MN 55021
ATTN: David Wanberg

With a copy to: Kennedy & Graven, Chartered
Fifth Street Towers, Suite 700
150 South Fifth Street
Minneapolis, MN 55402
ATTN: Scott J. Riggs

(b) As to Developer: Rebound Real Estate, LLC
527 Professional Drive, Suite 100
Northfield, MN 55057
ATTN: Jim Gooley

14. Counterparts.

This Agreement may be executed simultaneously in any number of counterparts, all of which shall constitute one and the same instrument.

15. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

16. Additional Actions.

The parties hereto understand that additional and separate actions, for which no obligation is created hereunder, will be required before either the City or Developer is obligated to take various actions with respect to the Development. Those actions include, but are not limited to:

- (a) Zoning, comprehensive plan, and subdivision approvals for any land use or development proposed by Developer; and
- (b) Review of any Tax Increment Financing arrangement, or other business subsidy, as required by law.

17. Incorporation.

The Recitals set forth in the preamble to this Agreement and the Exhibits attached to this Agreement are incorporated into this Agreement as if fully set forth herein.

18. Indemnification.

The Developer hereby agrees to protect, defend and hold the City and its officers, elected and appointed officials, employees, administrators, commissioners, agents, and representatives harmless from and indemnified against any and all loss, cost, fines, charges, damage and expenses, including, without limitation, reasonable attorneys' fees, consultants' and expert witness fees, and travel associated therewith, due to claims or demands of any kind whatsoever (including those based on strict liability) arising out of (i) the development, marketing, sale or leasing of all or any part of the Development Property, including, without limitation, any claims for any lien imposed by law for services, labor or materials furnished to or for the benefit of the Development Property, or (ii) any claim by the state of Minnesota or the Minnesota Pollution Control Agency or any other person pertaining to the violation of any permits, orders, decrees or demands made by said persons or with regard to the presence of any pollutant, contaminant or hazardous waste on the Development Property that occurs after the Developer purchases the Development Property; and (iii) or by reason of the execution of this Agreement or the performance of this Agreement. The Developer, and the Developer's successors or assigns, agree to protect, defend and save the City, and its officers, agents, and employees, harmless from all such claims, demands, damages, and causes of action and the costs, disbursements, and expenses of defending the same, including but not limited to, attorneys fees, consulting engineering services, and other technical, administrative or professional assistance. This indemnity shall be continuing and shall survive the performance, termination or cancellation of this Agreement. Nothing in this Agreement shall be construed as a

limitation of or waiver by City of any immunities, defenses, or other limitations on liability to which City is entitled by law, including but not limited to the maximum monetary limits on liability established by Minnesota Statutes, Chapter 466.

19. Release.

The Developer, for itself, its attorneys, agents, employees, former employees, insurers, heirs, administrators, representatives, successors, and assigns, hereby releases and forever discharges the City, and its attorneys, agents, representatives, employees, former employees, insurers, heirs, executors and assigns of and from any and all past, present or future claims, demands, obligations, actions or causes of action, at law or in equity, whether arising by statute, common law or otherwise, and for all claims for damages, of whatever kind or nature, and for all claims for attorneys' fees, and costs and expenses, including but not limited to all claims of any kind arising out of the negotiation, City consideration, execution and performance of this Agreement between the parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Developer has caused this Agreement to be duly executed in its name and behalf and the City has caused this Agreement to be duly executed in its name and behalf as of the day and year first above written.

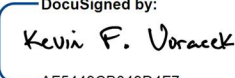
DEVELOPER

Rebound Real Estate, LLC

By: 
3C268A6CFE4B422...
Brett D. Reese
Its: Manager

CITY:

City of Faribault

By: 
AF5449CB049D4F7...
Kevin F. Voracek
Its: Mayor

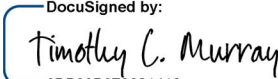
By: 
6DB99B870021410...
Timothy C. Murray
Its: City Administrator

Exhibit A

LEGAL DESCRIPTION OF REAL PROPERTY

Lot 1, Block 2 of RIVERCHASE ADDITION, according to the recorded plat thereof on file and of record in the office of the County Recorder in and for Rice County, Minnesota.

Parcel ID: 18.31.4.01.003

Project Address: 105 Riverchase Court
Faribault, MN 55021

Exhibit B

CONCEPTUAL DEVELOPMENT PROPOSAL





Council Work Session Memorandum

TO: Mayor and City Council
THROUGH: Jessica Kinser, City Administrator
FROM: Brad Phenow, Communications Manager
MEETING DATE: February 4, 2025
SUBJECT: Social Media Policy Discussion

Discussion:

In March 2024, the U.S. Supreme Court issued a ruling related to public official's use of social media specifically focused on the question of whether and when a public official's use of a personal social media constitutes "state action" governed by the First Amendment.

In short, the ruling created a two-part test to determine if the account is "attributable to the state": 1) the official must have authority to speak on behalf of the government and 2) must be exercising that power when creating the social media post in question. While the Court acknowledges that the test in question will still be fact specific, it has laid out an objective and clear rule that protects the speech of public officials and their constituents. Staff has attached a summary prepared by the Congressional Research Service to this agenda item for greater detail regarding this specific case, and those similar in nature. Also attached is the Supreme Court ruling.

As a result of this ruling, many governmental entities have since updated their social media policies to provide employees and elected officials with updated best practices on proper use of personal social media pages. The ruling also brought with it broader implications, further cementing the belief that pages which identify as elected officials are deemed "attributable to the state" and as a result, are considered government pages.

Staff is recommending the City of Faribault continue its positive and informative social media presence and is bringing forward this updated policy to ensure proper use by City representatives, while minimizing the risk associated with social networking activities.

Attachments:

1. CRS - Government Officials' Use of Social Media

2. 22-611 Lindke v. Freed
3. Faribault Social Media Policy - 2025

Lindke v. Freed and Government Officials' Use of Social Media

April 9, 2024

The First Amendment's Free Speech Clause limits the government's ability to exclude constituents from [public forums](#), both offline and online. In March 2024, the Supreme Court issued a ruling in [Lindke v. Freed](#) opining on when a government official's decision to block citizens from their social media accounts implicates the First Amendment. The case focuses on when an official should be treated as a government actor as opposed to a private actor. *Lindke* provides some guidance for public officials wondering when the Constitution restricts their ability to manage their online accounts, but it leaves open other questions relating to when a public official's account should be treated as a public forum. The decision also has broader implications for lawsuits alleging other types of constitutional violations.

Procedural History and Legal Background

The Supreme Court heard two cases appealed from different [U.S. Courts of Appeals](#), referenced here according to their circuit numbers: [Lindke v. Freed](#), an appeal from the Sixth Circuit, and [O'Connor-Ratcliff v. Garnier](#), an appeal from the Ninth Circuit. Both cases involved local officials who had blocked constituents from their Facebook and Twitter accounts because of the constituents' negative or repetitive comments. (While Twitter has since been renamed "X," the officials had "Twitter" accounts at the time of the blocking and litigation.)

Government retaliation against constituents because of the content or viewpoint of their speech can [violate the First Amendment](#). However, the First Amendment only applies to *government* action; private action usually does not trigger First Amendment protections. This limitation is known as the "[state action](#)" doctrine. The requirement to demonstrate state action is incorporated in [42 U.S.C. § 1983](#), a federal law that authorizes lawsuits against state or local officials who violate the Constitution. The *Lindke* and *Garnier* plaintiffs cited Section 1983 to bring their First Amendment claims. A critical issue in both cases was whether the public officials had acted in an official or private capacity when they blocked citizens.

The Supreme Court has [said](#) a public employee meets the state action requirement "while acting in his official capacity or while exercising his responsibilities pursuant to state law." This test can include individuals who [purport](#) to exercise government authority, such as a deputy sheriff who consistently referred to his government authority even when working at a private-sector job. The Supreme Court had not addressed government social media accounts—as the Court [observed](#) in *Lindke*, its state action cases

Congressional Research Service

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LSB11146

have largely considered “whether a nominally private person,” not a state official, has engaged in state action. (Another case the Court heard this term, *Murthy v. Missouri*, arguably involved that type of state action question with allegations that the government coerced private actors into retaliating against others’ speech.) A number of intermediate federal appeals courts had considered whether state action existed when public officials blocked constituents from social media accounts that the officials used for both personal and government activity. These courts sometimes took slightly different approaches to analyzing the issue, but most reviewed a few different factors, with a focus on how the account was being used. The Fourth Circuit, for instance, looked to “the totality of the circumstances” surrounding a county official’s Facebook page to conclude that she had created and used the page “to further her [official] duties.”

The Ninth Circuit took an arguably similar approach in *Garnier*. The case involved two school board trustees who had created Facebook and Twitter accounts while campaigning for office, and once in office, used the accounts to communicate with constituents about school board activity. The Ninth Circuit cited three factors to conclude the trustees’ use of their social media pages qualified as state action: (1) in “appearance and content,” the pages were “official channels of communication with the public” about school board work; (2) this presentation of the pages intentionally affected others’ behavior; and (3) the trustees’ posts “related directly to” their duties, and the specific blockings challenged in the case were “linked to events” arising out of the trustees’ official status.

The Sixth Circuit used a different test to evaluate the state action issue in *Lindke*, saying other appeals courts had focused too much on a page’s “appearance” rather than “the actor’s official duties and use of government resources or state employees.” In that case, a city manager named James Freed had converted his private Facebook profile into a public page before he held public office. Once he became city manager, Freed listed that title on his page but continued to post about his personal life in addition to city business. The Sixth Circuit held that Freed “operated his Facebook page in his personal capacity, not his official capacity.” Although he used the page to communicate with constituents about city responsibilities, similarly to the trustees in *Garnier*, the Sixth Circuit ruled that Freed was not performing any duties of the office because no statute, ordinance, or regulation required him to operate a Facebook page. The Sixth Circuit also stressed that the page would not be passed along to the next city manager and that city resources were not regularly used to maintain the page.

The Supreme Court heard oral arguments in both cases on October 31, 2023, as discussed in a prior Legal Sidebar.

Supreme Court Opinion

Justice Barrett authored a unanimous opinion in *Lindke v. Freed* vacating the Sixth Circuit opinion and remanding the case after clarifying the standard that the lower courts should apply. The Court first emphasized that Freed’s status as a state employee did not resolve the question, as the Court previously outlined in a long line of cases that government employees retain some First Amendment rights to speak in their private capacity even when they are sharing information related to their government employment. Instead, the Court said that “a public official’s social-media activity constitutes state action under §1983 only if the official (1) possessed actual authority to speak on the State’s behalf, and (2) purported to exercise that authority when he spoke on social media.”

With respect to the first prong, the Court held that Freed’s blocking would be state action if he had actual government authority “to post city updates and register citizen concerns,” and if the alleged censorship was “connected to speech on a matter within Freed’s bailiwick.” In contrast to the Sixth Circuit’s ruling on this issue, the Court cited the text of Section 1983 to hold that state authority could come not only from written law like statutes or ordinances, but also from custom or usage—that is, well-settled and persistent practices. The Court said that in some contexts, official power to speak about a subject might also be implied from a general grant of authority over that subject. The Court emphasized, however, that

the mere appearance of authority would not suffice with respect to this first prong. Private action not traceable to state authority **cannot qualify** as state action “no matter how ‘official’ it looks.”

The Court **said** the appearance of authority could be relevant to the second prong of the inquiry: whether public officials are purporting to speak in their official capacity or to further official responsibilities. The Court **indicated** this would be “a fact-specific undertaking in which the post’s content and function are the most important considerations.” While the Court did not rule on whether Freed had acted in an official or private capacity, it did suggest some factors that might be relevant to future analyses. For instance, it **stated** that if “Freed’s account carried a label (e.g., ‘this is the personal page of James R. Freed’) or a disclaimer (e.g., ‘the views expressed are strictly my own’),” that would create a “heavy” presumption that his posts were personal. Other **factors** might make it more likely the official was exercising official power, including if any given post expressly invoked state authority, appeared to have “immediate legal effect,” used government resources (including having staff make the post), or was the only place information or an order was available. The Court also **clarified** that the nature of the official’s action might alter the scope of an inquiry. If a court is investigating the deletion of a single comment, it will have to look at the nature of the specific post being remarked upon. In contrast, if a citizen is blocked from viewing an entire account, the court has to consider the nature of any and all posts that the citizen wanted to interact with on the account.

In *Garnier*, the Supreme Court similarly **vacated** the Ninth Circuit’s opinion and remanded the case for the lower court to apply the new approach it announced in *Lindke*.

Considerations for Congress

Although the Supreme Court’s opinion in *Lindke* did not finally resolve the cases before it, the Court did outline various factors that can aid lower courts—and public officials—in determining when a social media account is subject to First Amendment limitations. The need to demonstrate actual governmental authority provides one limiting factor on the reach of state action under the First Amendment. State action is not present **unless** the official was exercising authority to communicate with citizens about “a matter within [the official’s] bailiwick.” Thus, public officials may look to their official duties to determine whether they are constrained by the First Amendment. The fact that authority may sometimes be implied from a written duty or from well-settled custom could make this inquiry more complicated, though. Another signpost that may be helpful for public officials is that while the Court generally said that the state action inquiry should be fact-specific, it also **said** a page-wide label or disclaimer that an account is for personal use can carry significant weight. Accordingly, public officials who want to use social media accounts in their personal capacities might consider adding a “personal views”-type label or disclaimer. Nonetheless, the Court was **clear** that such a disclaimer would not insulate any posts that did in fact carry out official business, such as if a social media page is designated “as the official channel for receiving comments on a proposed regulation” or is used as the sole location to stream a public meeting.

The Court’s explanation of the proper state action inquiry will be relevant for plaintiffs whose claims rely on other constitutional provisions as well, such as the **Fourth Amendment**’s protections against unreasonable searches and seizures and the **Fourteenth Amendment**’s equal protection clause. Some federal appeals court **opinions** had previously **said** that state action could be **shown** by *apparent* authority in addition to actual authority (though these statements may have been dicta, and some **scholars** have **disagreed** with this approach). *Lindke* **clarifies** that some actual government authority must exist at the first step of the inquiry, and an individual exercising private functions that do not depend on government authority may not be a state actor. At the same time, state action can also **include** the misuse of the type of authority a state official has been granted, and can include someone who is “**purport[ing]**” to act under government authority but is acting outside the scope of the authority granted.

The state action inquiry is merely a preliminary question in a constitutional analysis. Even if a court concludes that a public official managing a social media account did act in an official capacity and is therefore subject to the First Amendment, the court still has to determine whether the public official actually violated the First Amendment. In this inquiry, a court may ask whether the public official created a [public forum](#) by intentionally opening the page for public discourse. If the government has created an online forum, it still might be able to clearly state [limits](#) on the scope of allowed discourse at the outset without violating the First Amendment. Previously announced social media policies can therefore be relevant in these cases. Even in such a “limited” public forum, however, the government may not engage in [viewpoint discrimination](#) and bar citizens because of their ideology or perspective. Thus, when social media accounts qualify as a public forum and public officials are speaking in an official capacity, courts have [said](#) public officials will [violate](#) the First Amendment when they bar speech because they find it offensive or merely disagree with it. As discussed in an [earlier Legal Sidebar](#), a number of cases have litigated how these principles apply in the context of social media accounts. Some open questions considered in lower courts include whether the “interactive” portions of social media might be viewed differently than other aspects of the account, as well as the relevance of social media companies’ private policies that may limit the use of the account. *Lindke* did not address these questions, and it is possible the Supreme Court may receive appeals in the future asking them to consider these issues.

Author Information

Valerie C. Brannon
Legislative Attorney

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

LINDKE *v.* FREEDCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

No. 22–611. Argued October 31, 2023—Decided March 15, 2024

James Freed, like countless other Americans, created a private Facebook profile sometime before 2008. He eventually converted his profile to a public “page,” meaning that *anyone* could see and comment on his posts. In 2014, Freed updated his Facebook page to reflect that he was appointed city manager of Port Huron, Michigan, describing himself as “Daddy to Lucy, Husband to Jessie and City Manager, Chief Administrative Officer for the citizens of Port Huron, MI.” Freed continued to operate his Facebook page himself and continued to post prolifically (and primarily) about his personal life. Freed also posted information related to his job, such as highlighting communications from other city officials and soliciting feedback from the public on issues of concern. Freed often responded to comments on his posts, including those left by city residents with inquiries about community matters. He occasionally deleted comments that he considered “derogatory” or “stupid.”

After the COVID–19 pandemic began, Freed posted about it. Some posts were personal, and some contained information related to his job. Facebook user Kevin Lindke commented on some of Freed’s posts, unequivocally expressing his displeasure with the city’s approach to the pandemic. Initially, Freed deleted Lindke’s comments; ultimately, he blocked him from commenting at all. Lindke sued Freed under 42 U. S. C. §1983, alleging that Freed had violated his First Amendment rights. As Lindke saw it, he had the right to comment on Freed’s Facebook page because it was a public forum. The District Court determined that because Freed managed his Facebook page in his private capacity, and because only state action can give rise to liability under §1983, Lindke’s claim failed. The Sixth Circuit affirmed.

Held: A public official who prevents someone from commenting on the official’s social-media page engages in state action under §1983 only if

Syllabus

the official both (1) possessed actual authority to speak on the State’s behalf on a particular matter, and (2) purported to exercise that authority when speaking in the relevant social-media posts. Pp. 5–15.

(a) Section 1983 provides a cause of action against “[e]very person who, *under color of any statute, ordinance, regulation, custom, or usage, of any State*” deprives someone of a federal constitutional or statutory right. (Emphasis added.) Section 1983’s “under color of” text makes clear that it is a provision designed as a protection against acts attributable to a State, not those of a private person. In the run-of-the-mill case, state action is easy to spot. Courts do not ordinarily pause to consider whether §1983 applies to the actions of police officers, public schools, or prison officials. Sometimes, however, the line between private conduct and state action is difficult to draw. In *Griffin v. Maryland*, 378 U. S. 130, for example, it was the source of the power, not the identity of the employer, which controlled in the case of a deputized sheriff who was held to have engaged in state action while employed by a privately owned amusement park. Since *Griffin*, most state-action precedents have grappled with whether a nominally private person engaged in state action, but this case requires analyzing whether a *state official* engaged in state action or functioned as a private citizen.

Freed’s status as a state employee is not determinative. The distinction between private conduct and state action turns on substance, not labels: Private parties can act with the authority of the State, and state officials have private lives and their own constitutional rights—including the First Amendment right to speak about their jobs and exercise editorial control over speech and speakers on their personal platforms. Here, if Freed acted in his private capacity when he blocked Lindke and deleted his comments, he did not violate Lindke’s First Amendment rights—instead, he exercised his own. Pp. 5–8.

(b) In the case of a public official using social media, a close look is definitely necessary to categorize conduct. In cases analogous to this one, precedent articulates principles to distinguish between personal and official communication in the social-media context. A public official’s social-media activity constitutes state action under §1983 only if the official (1) possessed actual authority to speak on the State’s behalf, and (2) purported to exercise that authority when he spoke on social media. The appearance and function of the social-media activity are relevant at the second step, but they cannot make up for a lack of state authority at the first. Pp. 8–15.

(1) The test’s first prong is grounded in the bedrock requirement that “the conduct allegedly causing the deprivation of a federal right be *fairly attributable to the State*.” *Lugar v. Edmondson Oil Co.*, 457 U. S. 922, 937 (emphasis added). Lindke’s focus on appearance skips

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over this critical step. Unless Freed was “possessed of state authority” to post city updates and register citizen concerns, *Griffin*, 378 U. S., at 135, his conduct is not attributable to the State. Importantly, Lindke must show more than that Freed had *some* authority to communicate with residents on behalf of Port Huron. The alleged censorship must be connected to speech on a matter within Freed’s bailiwick. There must be a tie between the official’s authority and “the gravamen of the plaintiff’s complaint.” *Blum v. Yaretsky*, 457 U. S. 991, 1003.

To misuse power, one must possess it in the first place, and §1983 lists the potential sources: “statute, ordinance, regulation, custom, or usage.” Determining the scope of an official’s power requires careful attention to the relevant source of that power and what authority it reasonably encompasses. The threshold inquiry to establish state action is not whether making official announcements *could* fit within a job description but whether making such announcements is *actually* part of the job that the State entrusted the official to do. Pp. 9–12.

(2) For social-media activity to constitute state action, an official must not only have state authority, he must also purport to use it. If the official does not speak in furtherance of his official responsibilities, he speaks with his own voice. Here, if Freed’s account had carried a label—*e.g.*, “this is the personal page of James R. Freed”—he would be entitled to a heavy presumption that all of his posts were personal, but Freed’s page was not designated either “personal” or “official.” The ambiguity surrounding Freed’s page requires a fact-specific undertaking in which posts’ content and function are the most important considerations. A post that expressly invokes state authority to make an announcement not available elsewhere is official, while a post that merely repeats or shares otherwise available information is more likely personal. Lest any official lose the right to speak about public affairs in his personal capacity, the plaintiff must show that the official purports to exercise state authority in specific posts. The nature of the social-media technology matters to this analysis. For example, because Facebook’s blocking tool operates on a page-wide basis, a court would have to consider whether Freed had engaged in state action with respect to any post on which Lindke wished to comment. Pp. 12–15.

37 F. 4th 1199, vacated and remanded.

BARRETT, J., delivered the opinion for a unanimous Court.

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SUPREME COURT OF THE UNITED STATES

No. 22–611

KEVIN LINDKE, PETITIONER *v.* JAMES R. FREED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[March 15, 2024]

JUSTICE BARRETT delivered the opinion of the Court.

Like millions of Americans, James Freed maintained a Facebook account on which he posted about a wide range of topics, including his family and his job. Like most of those Americans, Freed occasionally received unwelcome comments on his posts. In response, Freed took a step familiar to Facebook users: He deleted the comments and blocked those who made them.

For most people with a Facebook account, that would have been the end of it. But Kevin Lindke, one of the unwelcome commenters, sued Freed for violating his right to free speech. Because the First Amendment binds only the government, this claim is a nonstarter if Freed posted as a private citizen. Freed, however, is not only a private citizen but also the city manager of Port Huron, Michigan—and while Freed insists that his Facebook account was strictly personal, Lindke argues that Freed acted in his official capacity when he silenced Lindke’s speech.

When a government official posts about job-related topics on social media, it can be difficult to tell whether the speech is official or private. We hold that such speech is attributable to the State only if the official (1) possessed actual authority to speak on the State’s behalf, and (2) purported to

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exercise that authority when he spoke on social media.

I
A

Sometime before 2008, while he was a college student, James Freed created a private Facebook profile that he shared only with “friends.” In Facebook lingo, “friends” are not necessarily confidants or even real-life acquaintances. Users become “friends” when one accepts a “friend request” from another; after that, the two can generally see and comment on one another’s posts and photos. When Freed, an avid Facebook user, began nearing the platform’s 5,000-friend limit, he converted his profile to a public “page.” This meant that *anyone* could see and comment on his posts. Freed chose “public figure” for his page’s category, “James Freed” for its title, and “JamesRFreed1” as his username. Facebook did not require Freed to satisfy any special criteria either to convert his Facebook profile to a public page or to describe himself as a public figure.

In 2014, Freed was appointed city manager of Port Huron, Michigan, and he updated his Facebook page to reflect the new job. For his profile picture, Freed chose a photo of himself in a suit with a city lapel pin. In the “About” section, Freed added his title, a link to the city’s website, and the city’s general email address. He described himself as “Daddy to Lucy, Husband to Jessie and City Manager, Chief Administrative Officer for the citizens of Port Huron, MI.”

As before his appointment, Freed operated his Facebook page himself. And, as before his appointment, Freed posted prolifically (and primarily) about his personal life. He uploaded hundreds of photos of his daughter. He shared about outings like the Daddy Daughter Dance, dinner with his wife, and a family nature walk. He posted Bible verses, updates on home-improvement projects, and pictures of his dog, Winston.

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Freed also posted information related to his job. He described mundane activities, like visiting local high schools, as well as splashier ones, like starting reconstruction of the city’s boat launch. He shared news about the city’s efforts to streamline leaf pickup and stabilize water intake from a local river. He highlighted communications from other city officials, like a press release from the fire chief and an annual financial report from the finance department. On occasion, Freed solicited feedback from the public—for instance, he once posted a link to a city survey about housing and encouraged his audience to complete it.

Freed’s readers frequently commented on his posts, sometimes with reactions (for example, “Good job it takes skills” on a picture of his sleeping daughter) and sometimes with questions (for example, “Can you allow city residents to have chickens?”). Freed often replied to the comments, including by answering inquiries from city residents. (City residents can have chickens and should “call the Planning Dept for details.”) He occasionally deleted comments that he thought were “derogatory” or “stupid.”

After the COVID–19 pandemic began, Freed posted about that. Some posts were personal, like pictures of his family spending time at home and outdoors to “[s]tay safe” and “[s]ave lives.” Some contained general information, like case counts and weekly hospitalization numbers. Others related to Freed’s job, like a description of the city’s hiring freeze and a screenshot of a press release about a relief package that he helped prepare.

Enter Kevin Lindke. Unhappy with the city’s approach to the pandemic, Lindke visited Freed’s page and said so. For example, in response to one of Freed’s posts, Lindke commented that the city’s pandemic response was “abysmal” and that “the city deserves better.” When Freed posted a photo of himself and the mayor picking up takeout from a local restaurant, Lindke complained that while “residents [we]re suffering,” the city’s leaders were eating at an

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expensive restaurant “instead of out talking to the community.” Initially, Freed deleted Lindke’s comments; ultimately, he blocked him. Once blocked, Lindke could see Freed’s posts but could no longer comment on them.

B

Lindke sued Freed under 42 U. S. C. §1983, alleging that Freed had violated his First Amendment rights. As Lindke saw it, he had the right to comment on Freed’s Facebook page, which he characterized as a public forum. Freed, Lindke claimed, had engaged in impermissible viewpoint discrimination by deleting unfavorable comments and blocking the people who made them.

The District Court granted summary judgment to Freed. Because only state action can give rise to liability under §1983, Lindke’s claim depended on whether Freed acted in a “private” or “public” capacity. 563 F. Supp. 3d 704, 714 (ED Mich. 2021). The “prevailing personal quality of Freed’s post[s],” the absence of “government involvement” with his account, and the lack of posts conducting official business led the court to conclude that Freed managed his Facebook page in his private capacity, so Lindke’s claim failed. *Ibid.*

The Sixth Circuit affirmed. It noted that “the caselaw is murky as to when a state official acts personally and when he acts officially” for purposes of §1983. 37 F. 4th 1199, 1202 (2022). To sort the personal from the official, that court “asks whether the official is ‘performing an actual or apparent duty of his office,’ or if he could not have behaved as he did ‘without the authority of his office.’” *Id.*, at 1203 (quoting *Waters v. Morristown*, 242 F. 3d 353, 359 (CA6 2001)). Applying this precedent to the social-media context, the Sixth Circuit held that an official’s activity is state action if the “text of state law requires an officeholder to maintain a social-media account,” the official “use[s] . . . state resources” or “government staff” to run the account, or the

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“accoun[t] belong[s] to an office, rather than an individual officeholder.” 37 F. 4th, at 1203–1204. These situations, the Sixth Circuit explained, make an official’s social-media activity “‘fairly attributable’” to the State. *Id.*, at 1204 (quoting *Lugar v. Edmondson Oil Co.*, 457 U. S. 922, 937 (1982)). And it concluded that Freed’s activity was not.

The Sixth Circuit’s approach to state action in the social-media context differs from that of the Second and Ninth Circuits, which focus less on the connection between the official’s authority and the account and more on whether the account’s appearance and content look official. See, e.g., *Garnier v. O’Connor-Ratcliff*, 41 F. 4th 1158, 1170–1171 (CA9 2022); *Knight First Amdt. Inst. at Columbia Univ. v. Trump*, 928 F. 3d 226, 236 (CA2 2019), vacated as moot *sub nom. Biden v. Knight First Amdt. Inst. at Columbia Univ.*, 593 U. S. ____ (2021). We granted certiorari. 598 U. S. ____ (2023).

II

Section 1983 provides a cause of action against “[e]very person who, *under color of any statute, ordinance, regulation, custom, or usage, of any State*” deprives someone of a federal constitutional or statutory right. (Emphasis added.) As its text makes clear, this provision protects against acts attributable to a State, not those of a private person. This limit tracks that of the Fourteenth Amendment, which obligates *States* to honor the constitutional rights that §1983 protects. §1 (“No *State* shall . . . nor shall any *State* deprive . . . ” (emphasis added)); see also *Lugar*, 457 U. S., at 929 (“[T]he statutory requirement of action ‘under color of state law’ and the ‘state action’ requirement of the Fourteenth Amendment are identical”). The need for governmental action is also explicit in the Free Speech Clause, the guarantee that Lindke invokes in this case. Amdt. 1 (“*Congress* shall make no law . . . abridging the freedom of speech . . . ” (emphasis added)); see also *Manhattan Community Access*

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Corp. v. Halleck, 587 U. S. 802, 808 (2019) (“[T]he Free Speech Clause prohibits only *governmental* abridgment of speech,” not “*private* abridgment of speech”). In short, the state-action requirement is both well established and reinforced by multiple sources.¹

In the run-of-the-mill case, state action is easy to spot. Courts do not ordinarily pause to consider whether §1983 applies to the actions of police officers, public schools, or prison officials. See, e.g., *Graham v. Connor*, 490 U. S. 386, 388 (1989) (police officers); *Tinker v. Des Moines Independent Community School Dist.*, 393 U. S. 503, 504–505 (1969) (public schools); *Estelle v. Gamble*, 429 U. S. 97, 98 (1976) (prison officials). And, absent some very unusual facts, no one would credit a child’s assertion of free speech rights against a parent, or a plaintiff’s complaint that a nosy neighbor unlawfully searched his garage.

Sometimes, however, the line between private conduct and state action is difficult to draw. *Griffin v. Maryland* is a good example. 378 U. S. 130 (1964). There, we held that a security guard at a privately owned amusement park engaged in state action when he enforced the park’s policy of segregation against black protesters. *Id.*, at 132–135. Though employed by the park, the guard had been “deputized as a sheriff of Montgomery County” and possessed “‘the same power and authority’” as any other deputy sheriff. *Id.*, at 132, and n. 1. The State had therefore allowed its power to be exercised by someone in the private sector. And the source of the power, not the identity of the employer, controlled.

By and large, our state-action precedents have grappled

¹Because local governments are subdivisions of the State, actions taken under color of a local government’s law, custom, or usage count as “state” action for purposes of §1983. See *Monell v. New York City Dept. of Social Servs.*, 436 U. S. 658, 690–691 (1978). And when a state or municipal employee violates a federal right while acting “under color of law,” he can be sued in an individual capacity, as Freed was here.

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with variations of the question posed in *Griffin*: whether a nominally private person has engaged in state action for purposes of §1983. See, e.g., *Marsh v. Alabama*, 326 U. S. 501, 502–503 (1946) (company town); *Adickes v. S. H. Kress & Co.*, 398 U. S. 144, 146–147 (1970) (restaurant); *Flagg Bros., Inc. v. Brooks*, 436 U. S. 149, 151–152 (1978) (warehouse company). Today’s case, by contrast, requires us to analyze whether a *state official* engaged in state action or functioned as a private citizen. This Court has had little occasion to consider how the state-action requirement applies in this circumstance.

The question is difficult, especially in a case involving a state or local official who routinely interacts with the public. Such officials may look like they are always on the clock, making it tempting to characterize every encounter as part of the job. But the state-action doctrine avoids such broad-brush assumptions—for good reason. While public officials can act on behalf of the State, they are also private citizens with their own constitutional rights. By excluding from liability “acts of officers in the ambit of their personal pursuits,” *Screws v. United States*, 325 U. S. 91, 111 (1945) (plurality opinion), the state-action requirement “protects a robust sphere of individual liberty” for those who serve as public officials or employees, *Halleck*, 587 U. S., at 808.

The dispute between Lindke and Freed illustrates this dynamic. Freed did not relinquish his First Amendment rights when he became city manager. On the contrary, “the First Amendment protects a public employee’s right, in certain circumstances, to speak as a citizen addressing matters of public concern.” *Garcetti v. Ceballos*, 547 U. S. 410, 417 (2006). This right includes the ability to speak about “information related to or learned through public employment,” so long as the speech is not “itself ordinarily within the scope of [the] employee’s duties.” *Lane v. Franks*, 573 U. S. 228, 236, 240 (2014). Where the right exists, “editorial control over speech and speakers on [the public employee’s]

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properties or platforms” is part and parcel of it. *Halleck*, 587 U. S., at 816. Thus, if Freed acted in his private capacity when he blocked Lindke and deleted his comments, he did not violate Lindke’s First Amendment rights—instead, he exercised his own.

So Lindke cannot hang his hat on Freed’s status as a state employee. The distinction between private conduct and state action turns on substance, not labels: Private parties can act with the authority of the State, and state officials have private lives and their own constitutional rights. Categorizing conduct, therefore, can require a close look.

III

A close look is definitely necessary in the context of a public official using social media. There are approximately 20 million state and local government employees across the Nation, with an extraordinarily wide range of job descriptions—from Governors, mayors, and police chiefs to teachers, healthcare professionals, and transportation workers. Many use social media for personal communication, official communication, or both—and the line between the two is often blurred. Moreover, social media involves a variety of different and rapidly changing platforms, each with distinct features for speaking, viewing, and removing speech. The Court has frequently emphasized that the state-action doctrine demands a fact-intensive inquiry. See, e.g., *Reitman v. Mulkey*, 387 U. S. 369, 378 (1967); *Gilmore v. Montgomery*, 417 U. S. 556, 574 (1974). We repeat that caution here.

That said, our precedent articulates principles that govern cases analogous to this one. For the reasons we explain below, a public official’s social-media activity constitutes state action under §1983 only if the official (1) possessed actual authority to speak on the State’s behalf, and (2) purported to exercise that authority when he spoke on social media. The appearance and function of the social-media activity are relevant at the second step, but they cannot make

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up for a lack of state authority at the first.

A

The first prong of this test is grounded in the bedrock requirement that “the conduct allegedly causing the deprivation of a federal right be *fairly attributable to the State*.” *Lugar*, 457 U. S., at 937 (emphasis added). An act is not attributable to a State unless it is traceable to the State’s power or authority. Private action—no matter how “official” it looks—lacks the necessary lineage.

This rule runs through our cases. *Griffin* stresses that the security guard was “possessed of state authority” and “purport[ed] to act under that authority.” 378 U. S., at 135. *West v. Atkins* states that the “traditional definition” of state action “requires that the defendant . . . have exercised power ‘possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.’” 487 U. S. 42, 49 (1988) (quoting *United States v. Classic*, 313 U. S. 299, 326 (1941)). *Lugar* emphasizes that state action exists only when “the claimed deprivation has resulted from the exercise of a right or privilege having its source in state authority.” 457 U. S., at 939; see also, e.g., *Edmonson v. Leesville Concrete Co.*, 500 U. S. 614, 620 (1991) (describing state action as the “exercise of a right or privilege having its source in state authority”); *Screws*, 325 U. S., at 111 (plurality opinion) (police-officer defendants “were authorized to make an arrest and to take such steps as were necessary to make the arrest effective”). By contrast, when the challenged conduct “entail[s] functions and obligations in no way dependent on state authority,” state action does not exist. *Polk County v. Dodson*, 454 U. S. 312, 318–319 (1981) (no state action because criminal defense “is essentially a private function . . . for which state office and authority are not needed”); see also *Jackson v. Metropolitan Edison Co.*, 419 U. S. 345, 358–359 (1974).

Lindke’s focus on appearance skips over this crucial step.

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He insists that Freed’s social-media activity constitutes state action because Freed’s Facebook page looks and functions like an outlet for city updates and citizen concerns. But Freed’s conduct is not attributable to the State unless he was “possessed of state authority” to post city updates and register citizen concerns. *Griffin*, 378 U. S., at 135. If the State did not entrust Freed with these responsibilities, it cannot “fairly be blamed” for the way he discharged them. *Lugar*, 457 U. S., at 936. Lindke imagines that Freed can conjure the power of the State through his own efforts. Yet the presence of state authority must be real, not a mirage.

Importantly, Lindke must show more than that Freed had *some* authority to communicate with residents on behalf of Port Huron. The alleged censorship must be connected to speech on a matter within Freed’s bailiwick. For example, imagine that Freed posted a list of local restaurants with health-code violations and deleted snarky comments made by other users. If public health is not within the portfolio of the city manager, then neither the post nor the deletions would be traceable to Freed’s state authority—because he had none. For state action to exist, the State must be “responsible for the specific conduct of which the plaintiff complains.” *Blum v. Yaretsky*, 457 U. S. 991, 1004 (1982) (emphasis deleted). There must be a tie between the official’s authority and “the gravamen of the plaintiff’s complaint.” *Id.*, at 1003.

To be clear, the “[m]isuse of power, possessed by virtue of state law,” constitutes state action. *Classic*, 313 U. S., at 326 (emphasis added); see also, *e.g.*, *Screws*, 325 U. S., at 110 (plurality opinion) (state action where “the power which [state officers] were authorized to exercise was misused”). While the state-action doctrine requires that the State have granted an official the type of authority that he used to violate rights—*e.g.*, the power to arrest—it encompasses cases where his “particular action”—*e.g.*, an arrest made with excessive force—violated state or federal law. *Griffin*,

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378 U. S., at 135; see also *Home Telephone & Telegraph Co. v. Los Angeles*, 227 U. S. 278, 287–288 (1913) (the Fourteenth Amendment encompasses “abuse by a state officer . . . of the powers possessed”). Every §1983 suit alleges a misuse of power, because no state actor has the authority to deprive someone of a federal right. To misuse power, however, one must possess it in the first place.

Where does the power come from? Section 1983 lists the potential sources: “statute, ordinance, regulation, custom, or usage.” Statutes, ordinances, and regulations refer to written law through which a State can authorize an official to speak on its behalf. “Custom” and “usage” encompass “persistent practices of state officials” that are “so permanent and well settled” that they carry “the force of law.” *Adickes*, 398 U. S., at 167–168. So a city manager like Freed would be authorized to speak for the city if written law like an ordinance empowered him to make official announcements. He would also have that authority even in the absence of written law if, for instance, prior city managers have purported to speak on its behalf and have been recognized to have that authority for so long that the manager’s power to do so has become “permanent and well settled.” *Id.*, at 168. And if an official has authority to speak for the State, he may have the authority to do so on social media even if the law does not make that explicit.

Determining the scope of an official’s power requires careful attention to the relevant statute, ordinance, regulation, custom, or usage. In some cases, a grant of authority over particular subject matter may reasonably encompass authority to speak about it officially. For example, state law might grant a high-ranking official like the director of the state department of transportation broad responsibility for the state highway system that, in context, includes authority to make official announcements on that subject. At the same time, courts must not rely on “‘excessively broad job descriptions’” to conclude that a government employee is

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authorized to speak for the State. *Kennedy v. Bremerton School Dist.*, 597 U. S. 507, 529 (2022) (quoting *Garcetti*, 547 U. S., at 424). The inquiry is not whether making official announcements *could* fit within the job description; it is whether making official announcements is *actually* part of the job that the State entrusted the official to do.

In sum, a defendant like Freed must have actual authority rooted in written law or longstanding custom to speak for the State. That authority must extend to speech of the sort that caused the alleged rights deprivation. If the plaintiff cannot make this threshold showing of authority, he cannot establish state action.

B

For social-media activity to constitute state action, an official must not only have state authority—he must also purport to use it. *Griffin*, 378 U. S., at 135. State officials have a choice about the capacity in which they choose to speak. “[G]enerally, a public employee” purports to speak on behalf of the State while speaking “in his official capacity or” when he uses his speech to fulfill “his responsibilities pursuant to state law.” *West*, 487 U. S., at 50. If the public employee does not use his speech in furtherance of his official responsibilities, he is speaking in his own voice.

Consider a hypothetical from the offline world. A school board president announces at a school board meeting that the board has lifted pandemic-era restrictions on public schools. The next evening, at a backyard barbecue with friends whose children attend public schools, he shares that the board has lifted the pandemic-era restrictions. The former is state action taken in his official capacity as school board president; the latter is private action taken in his personal capacity as a friend and neighbor. While the substance of the announcement is the same, the context—an official meeting versus a private event—differs. He invoked his official authority only when he acted as school board

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president.

The context of Freed’s speech is hazier than that of the hypothetical school board president. Had Freed’s account carried a label (*e.g.*, “this is the personal page of James R. Freed”) or a disclaimer (*e.g.*, “the views expressed are strictly my own”), he would be entitled to a heavy (though not irrebuttable) presumption that all of the posts on his page were personal. Markers like these give speech the benefit of clear context: Just as we can safely presume that speech at a backyard barbeque is personal, we can safely presume that speech on a “personal” page is personal (absent significant evidence indicating that a post is official).² Conversely, context can make clear that a social-media account purports to speak for the government—for instance, when an account belongs to a political subdivision (*e.g.*, a “City of Port Huron” Facebook page) or is passed down to whomever occupies a particular office (*e.g.*, an “@PHuronCityMgr” Instagram account). Freed’s page, however, was not designated either “personal” or “official,” raising the prospect that it was “mixed use”—a place where he made some posts in his personal capacity and others in his capacity as city manager.

Categorizing posts that appear on an ambiguous page like Freed’s is a fact-specific undertaking in which the post’s content and function are the most important considerations. In some circumstances, the post’s content and

² An official cannot insulate government business from scrutiny by conducting it on a personal page. The Solicitor General offers the particularly clear example of an official who designates space on his nominally personal page as the official channel for receiving comments on a proposed regulation. Because the power to conduct notice-and-comment rulemaking belongs exclusively to the State, its exercise is necessarily governmental. Similarly, a mayor would engage in state action if he hosted a city council meeting online by streaming it only on his personal Facebook page. By contrast, a post that is compatible with either a “personal capacity” or “official capacity” designation is “personal” if it appears on a personal page.

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function might make the plaintiff's argument a slam dunk. Take a mayor who makes the following announcement exclusively on his Facebook page: "Pursuant to Municipal Ordinance 22.1, I am temporarily suspending enforcement of alternate-side parking rules." The post's express invocation of state authority, its immediate legal effect, and the fact that the order is not available elsewhere make clear that the mayor is purporting to discharge an official duty. If, by contrast, the mayor merely repeats or shares otherwise available information—for example, by linking to the parking announcement on the city's webpage—it is far less likely that he is purporting to exercise the power of his office. Instead, it is much more likely that he is engaging in private speech "relate[d] to his public employment" or "concern[ing] information learned during that employment." *Lane*, 573 U. S., at 238.

Hard-to-classify cases require awareness that an official does not necessarily purport to exercise his authority simply by posting about a matter within it. He might post job-related information for any number of personal reasons, from a desire to raise public awareness to promoting his prospects for reelection. Moreover, many public officials possess a broad portfolio of governmental authority that includes routine interaction with the public, and it may not be easy to discern a boundary between their public and private lives. Yet these officials too have the right to speak about public affairs in their personal capacities. See, *e.g.*, *id.*, at 235–236. Lest any official lose that right, it is crucial for the plaintiff to show that the official is purporting to exercise state authority in specific posts. And when there is doubt, additional factors might cast light—for example, an official who uses government staff to make a post will be hard pressed to deny that he was conducting government business.

One last point: The nature of the technology matters to the state-action analysis. Freed performed two actions to

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which Lindke objected: He deleted Lindke’s comments and blocked him from commenting again. So far as deletion goes, the only relevant posts are those from which Lindke’s comments were removed. Blocking, however, is a different story. Because blocking operated on a page-wide basis, a court would have to consider whether Freed had engaged in state action with respect to any post on which Lindke wished to comment. The bluntness of Facebook’s blocking tool highlights the cost of a “mixed use” social-media account: If page-wide blocking is the only option, a public official might be unable to prevent someone from commenting on his personal posts without risking liability for also preventing comments on his official posts.³ A public official who fails to keep personal posts in a clearly designated personal account therefore exposes himself to greater potential liability.

* * *

The state-action doctrine requires Lindke to show that Freed (1) had actual authority to speak on behalf of the State on a particular matter, and (2) purported to exercise that authority in the relevant posts. To the extent that this test differs from the one applied by the Sixth Circuit, we vacate its judgment and remand the case for further proceedings consistent with this opinion.

It is so ordered.

³On some platforms, a blocked user might be unable even to *see* the blocker’s posts. See, e.g., *Garnier v. O’Connor-Ratcliff*, 41 F. 4th, 1158, 1164 (CA9 2022) (noting that “on Twitter, once a user has been ‘blocked,’ the individual can neither interact with nor view the blocker’s Twitter feed”); *Knight First Amdt. Inst. at Columbia Univ. v. Trump*, 928 F. 3d 226, 231 (CA2 2019) (noting that a blocked user is unable to see, reply to, retweet, or like the blocker’s tweets).



City of Faribault, Minnesota Social Media Policy

Purpose

Social networking in government serves two primary functions: to communicate and deliver messages directly to citizens and to encourage citizen involvement, interaction, and feedback. Information which is distributed via social networking must be accurate, consistent, and timely and meet the information needs of the City's intended audience. Social media is used for social networking, and this policy seeks to ensure proper administration of the City of Faribault's social media sites by its representatives.

The City has limited control of social media accounts with third parties (i.e., Facebook, Instagram, X (formerly Twitter), etc.). At the same time, there is a general expectation by the public that the City maintains a social media presence by which to share information about current City projects and City business. For municipal purposes, the City's social media accounts will be used for incidental, non-vital communication and general information only. It is not the purpose of the City's social media accounts to be a medium for transactions of City business. The one exception is in the case of a natural or man-made disaster, if it is determined by the City that the best means of communicating with the public is through the social media account(s).

The City of Faribault wishes to establish a positive and informative social media presence. City representatives have the responsibility to use the City's social media resources in an efficient, effective, ethical, and lawful manner pursuant to all existing City policies. This policy seeks to ensure proper use of the City of Faribault's social media sites by its representatives to minimize risk associated with social networking activities. City representatives include its employees and other agents of the City, including independent contractors and elected officials.

Policy

The City of Faribault will determine, at its discretion, how its web-based social media resources will be designed, implemented, and managed as part of its overall communication and information sharing strategy.

City of Faribault social media accounts are considered a City asset and administrator access to these accounts will be securely administered in accordance with the City's Computer Use Policy.

All social media websites created and utilized during the course and scope of an employee's performance of his/her job duties will be identified as belonging to the City of Faribault, including a link to the City's official website.



Scope

This policy applies to any existing or proposed social media websites sponsored, established, registered, or authorized by the City of Faribault. The City's social media accounts are exclusively the following:

Facebook

1. City of Faribault - facebook.com/cityoffaribault/
2. Faribault Fire Department - facebook.com/faribaultfire/
3. Faribault Police Department - facebook.com/FaribaultPoliceDepartment/
4. Faribault Parks and Recreation - facebook.com/FaribaultParksandRecreation/
5. Faribault Family Aquatic Center - facebook.com/FFACmn/
6. Buckham Memorial Library - facebook.com/BuckhamMemorialLibrary/

X (formerly Twitter)

1. Faribault Fire Department - x.com/FaribaultFire
2. Faribault Police Department - x.com/FaribaultPolice
3. City of Faribault - x.com/CityofFaribault
4. Faribault Parks and Recreation - x.com/FboParkandRec

Instagram

1. City of Faribault - instagram.com/city_of_faribault/
2. Faribault Police Department - instagram.com/faribaultpolice/
3. Faribault Parks and Recreation - instagram.com/fboparksandrec/
4. Buckham Memorial Library - instagram.com/buckhammemoriallibrary/

YouTube

1. City of Faribault - [youtube.com/@cityoffaribault6431](https://www.youtube.com/@cityoffaribault6431)
2. Buckham Memorial Library - [youtube.com/@buckhammemoriallibrary6804](https://www.youtube.com/@buckhammemoriallibrary6804)

LinkedIn

1. City of Faribault - linkedin.com/company/city-of-faribault
2. Faribault Police Department - linkedin.com/company/faribault-police-dept
3. Faribault Economic Development Authority - linkedin.com/company/faribaultmn-eda

Flickr

1. Buckham Memorial Library - flickr.com/photos/buckhamlibrary/
2. Faribault Parks and Recreation - www.flickr.com/photos/27960949@N06/

The City does not create, collect, disseminate, or regulate use of any other social media accounts, including the personal accounts of its elected officials and staff. Questions regarding the scope of this policy should be directed to the Communications Manager.



Definition

Social media are internet and mobile-based applications, websites, and functions, other than email, for sharing and discussing information, where users can post photos, video, comments, and links to other information to create content on any imaginable topic. This may be referred to as “user-generated content” or “consumer-generated media.”

Social media includes, but is not limited to:

- Social networking sites and apps such as Facebook, LinkedIn, Twitter, and Nextdoor
- Blogs
- Social news sites such as Reddit and BuzzFeed
- Video and photo sharing sites and apps such as YouTube, Instagram, SnapChat, and Flickr
- Wikis, or shared encyclopedias, such as Wikipedia
- An ever-emerging list of new web-based platforms generally regarded as social media or having many of the same functions as those listed above

As used in this policy, “employees and agents” means all City representatives, including its employees and other agents of the City, such as independent contractors, or elected officials.

“Social media manager” means any City employee or agent with administrator access who, when posting or responding to a post, appears to be the City social media account owner.

Rules of Use

City social media managers are responsible for managing City social media accounts or websites.

Facilities or departments wishing to have a new social media presence must initially submit a request to the Communications Manager in order to ensure social media accounts are kept to a sustainable number and policies are followed. All approved sites will be clearly marked as the City of Faribault site and will be linked with the official City website (www.ci.faribault.mn.us). No one may establish social media accounts or websites on behalf of the City unless authorized in accordance with this policy.

The City’s social media page must conspicuously display or link to Appendix A of this policy which informs the public of the purpose of the social media presence and the terms one agrees to in accessing, using, or posting to the City’s social media page.

Administration of all City social media websites will comply with applicable laws, regulations, and policies as well as proper business etiquette.

City social media accounts covered by this policy will not be used by social media managers for private or personal purposes or for the purpose of expressing private or personal views on personal, political, or policy issues or to express personal views or concerns pertaining to City employment relations matters.



The City respects employees and agents' rights to post and maintain personal websites, blogs and social media pages and to use and enjoy social media on their own personal devices during non-work hours. The City requires employees and agents to act in a prudent manner with regard to website and internet postings that reference the City of Faribault, its personnel, its operation or its property.

Employees and agents and others affiliated with the City may not use a City brand, logo or other City identifiers on their personal sites, nor post information that purports to be the position of the City without prior authorization, other than listing the City of Faribault as an employer under employment on their page. Failure to adhere to this could result in the Courts finding your page being deemed as a government page.

No City social media account may be used by the City or any social media manager to disclose private or confidential information. No social media website should be used to disclose sensitive information; if there is any question as to whether information is private, confidential, or sensitive, contact the Communications Manager.

Outside of situations of disaster, no City social media account will be used for transactions of city business. In the event a user initiates a request, application, or question through social media that affects city business or requires another city policy or process to be followed, follow up with that user by phone, email, or other channels. If comments are allowed, in the event of a question of general interest, a response may be given in comments, the initial post may be edited, or a subsequent post may be created to include the information.

City staff and Councilmembers are prohibited from deleting and/or hiding posts and related comments without prior approval to avoid violating Minnesota Public Records Law and to refrain from infringing on First Amendment rights. Comments posted by members of the public may be removed if they are in violation of Appendix A of this policy. Please consult with the Communications Manager and/or City Administrator before removing content.

City staff and Councilmembers are prohibited from blocking individuals and/or individual pages.

A member of the public whose comment is removed may appeal the removal of the comment and seek reconsideration of its removal by contacting the City in writing and explaining how the comment does not fall into one of the categories for removal. A written response should be provided as soon as reasonably possible.

A member of the public who disputes the legality of any portion of this policy may dispute the particular portion in writing. The City should acknowledge the claim promptly and, upon consultation of the city attorney, respond to the claim concerning legality of the policy portion as soon as reasonably possible under the circumstances.



Elected Officials and Officials Appointed to City Boards, Committees and Commissions

Official city social media sites shall not be used for campaigning purposes. Comments or links to any content that endorses or opposes political candidates or ballot propositions, including links to an elected official's campaign site, shall not be posted.

Elected officials and members serving on a City board, commission, or committee should be mindful of the risks of electronic communication in relation to the Minnesota Data Practices Act and Open Meeting Law; two-way communication between elected officials or between members of the City boards, commissions, committees should be avoided. Adding to a post or comment on a non-public, private social media website that would create a quorum of the group you represent is prohibited. If the comment or posting requires official review it should be handled before the group at a public meeting.

Account Transition

When an elected official leaves office, and if a social media account has been created for that seat, the account will transfer to the new office-holder. The accounts will be updated to reflect the new elected official.

Data Ownership and Retention

All communications or messages within social media accounts covered by this policy composed, sent, or received on City or personal equipment are the property of the City and will be subject to the Minnesota Government Data Practices Act. This law classifies certain information as available to the public upon request. As no transactions of City business shall be conducted through social media accounts (outside of disasters), in accordance with the City's records retention schedule, the City shall retain all social media messages only until read.

All City social media accounts (including those administered by City staff and elected officials) shall be archived via archiving software to allow for easy management of content. This web-based software is administered by the Communications Manager.

Policy Violations

Violations of this Policy will subject the employee to disciplinary action up to and including discharge from employment.



APPENDIX A

The purpose of the City of Faribault's social media presence is to provide members of the community with information in more places and more ways than were traditionally available. All content of this site is public and is subject to disclosure pursuant to the Minnesota Government Data Practices Act. Please be aware that anything you post may survive deletion, whether by you or others. Do not post sensitive or personally identifiable information, such as social security numbers.

Following or "friending" persons or organizations is not an endorsement by the City and is only intended as a means of broadening communication. The City is not responsible for content found at links to third parties, nor the views or opinions expressed by third-party comments.

Please be advised that comments falling into the following category or categories may be removed:

- Obscene or pornographic content
- Direct threats to persons or property
- Material asserted to violate the intellectual property of another person
- Private, personal information about a person published without his/her consent
- Information that endangers the public by compromising a public safety security system
- Statutorily private, confidential, or nonpublic data
- Commercial promotions or spam
- Hyperlinks to material that falls into at least one of the foregoing categories

Should your comment be removed by the City and you believe it does not fall into one of the above categories, contact the Communications Manager (accessibility@ci.farbault.mn.us) in writing to explain how the comment does not fall into one of these categories.

Should you wish to challenge the legality of any portion of this notice or the City's social media policy, you may contact Communications Manager (accessibility@ci.farbault.mn.us) in writing and explain the basis for the challenge in detail.

If you have any other questions about the City of Faribault's social media presence, contact Communications Manager at accessibility@ci.farbault.mn.us.

By accessing, using, or posting to this City of Faribault's social media page, you acknowledge you have been advised of the foregoing.



Representative Acknowledgement

I have received and read the above policy and have had an opportunity to ask any questions. I understand that my failure to follow this policy may result in disciplinary action, including revocation of system privileges or termination.

_____ (Print Name)

_____ (Signature)

_____ (Position Title)

_____ (Date)

State of Minnesota County of Rice





Council Work Session Memorandum

TO: Mayor and City Council
THROUGH: Jessica Kinser, City Administrator
FROM: Brad Phenow, Communications Manager
MEETING DATE: February 4, 2025
SUBJECT: Honorary Councilmember Program Discussion

Discussion:

Following the suggestion by Councilmember Doumbouya to develop an Honorary Councilmember Program, staff is proposing a 3-month term meant to provide additional local government exposure to members of our community, while empowering and increasing multi-generational, and multi-cultural leadership.

Honorary Councilmembers will receive all Council agenda documents and be given the opportunity to provide input during the "Reports, Announcements and Project Updates" portion of the meeting. However, there will be no monetary compensation for the program, and Honorary Councilmembers will not have voting power.

Staff suggests making the program available to those age 21 and older who have lived in the community for a minimum of 30 days. Honorary Councilmembers will receive a tour of City facilities at the beginning of their term, and throughout their time are expected to attend Council meetings and various board and commission meetings (as deemed appropriate).

City Staff plans to proactively reach out to previous board and commission applicants, in addition to those who have provided letters of interest for Council vacancies.

Attachments:



Council Work Session Memorandum

TO: Mayor and City Council
THROUGH: Jessica Kinser, City Administrator
FROM: Brad Phenow, Communications Manager
MEETING DATE: February 4, 2025
SUBJECT: Residents Academy Program Discussion

Discussion:

Following the presentation of the Community Survey data in October, the City Council was receptive to a number of new community engagement programs developed to increase resident involvement, while providing a more formal overview of our daily functions.

Since then, staff has been researching various programs and is proposing a Faribault Residents Academy this summer. The mission of the program is to educate residents about the functions of City government while building a better community through the efforts of well-informed and civically engaged public body.

This program includes a series of classroom-style presentations designed to teach participants about major aspects of City government and the essential functions each department performs, while bringing participants inside the facilities where the work all happens.

Sessions will range in topics from how the City treats its drinking water and what it does with its wastewater, to how the City uses its airport as an economic driver, to how community policing is changing the entire landscape of public safety.

Staff is proposing to open the program to 12 community members for the Wednesday evening classes which will be held from June 4 through July 30 (skipping the week of July 4). A light meal will be furnished at each session. See the proposed schedule below.

DATES	CITY DEPARTMENT FOCUS	LOCATION
June 4	History of Faribault	Faribault City Hall
June 11	Library Services Department	Buckham Memorial Library
June 18	Public Safety - Police	Faribault Police Department

June 25	Parks and Recreation (Parks Tour)	Meet at Community Center
<i>No class the week of July 4</i>		
July 9	Airport – Functions and Offerings	Faribault Municipal Airport
July 16	Public Safety – Fire	Faribault Fire Department
July 23	Water, Wastewater, Infrastructure	Faribault Public Works
July 30	Community and Economic Development	Faribault City Hall

City staff plans to launch an online application portal, and preference will be given to those with no previous experience serving on a [board or commission](#).

Attachments: