



MICHAEL N. FEUER
CITY ATTORNEY

October 28, 2022

James A. Frieden
Law Office of James A. Frieden
By email to: jfriedenatty@gmail.com

Re: Department of Animal Services Volunteers

Dear Mr. Frieden,

This is in response to your October 11 and October 26, 2022, letters regarding the Department of Animal Services' (Department) Volunteer Program and the Department's requirements related to volunteer interactions with the media. I am responding to correct a few inaccurate assertions made in your letters and to inform you of actions the Department is taking to further explain the requirements and how they apply to volunteers.

In your letters, you assert that the Department requires its volunteers to waive their First Amendment right to speak to the media or post comments on social media as private individuals. This is not true. The Department's requirement that a volunteer must receive authorization before speaking to the media and direct all media inquiries to appropriate Department staff applies to situations where the volunteer is speaking or purporting to speak in an official capacity on behalf of the City/Department. This requirement is not a waiver of any constitutional rights – it does not prohibit a volunteer from speaking to the media or using social media as a private individual, nor is it applied in such a manner. As you acknowledged in your October 11 letter, the Department explained the above to volunteer Jeffrey Mausner in an email on July 17, 2022, and has offered this explanation to other volunteers as well. The Department applies this requirement to all its volunteers in the same manner.

However, to avoid any potential confusion or misunderstanding, the Department is revising portions of its volunteer agreement and related materials to specify that volunteers must receive authorization before interacting with the media when doing so on behalf of the City/Department or when giving that impression. The revised materials

will suggest that when speaking in their private capacity, a volunteer should avoid any appearance that they are doing so on behalf of the City/Department. The Department is already in the process of revising and updating its volunteer agreement and related materials and expects to complete this process within a few weeks. In addition, the Department will be sending a communication to its volunteers explaining the above. These revisions and clarifications should resolve any misunderstanding that a volunteer is somehow prohibited from speaking as a private citizen.

The Department does not retaliate or take any other adverse action against its volunteers for exercising their First Amendment rights, including for speaking to the media as private individuals. I cannot provide details about any specific personnel matter, but there are occasions when the Department must suspend or release a volunteer from the program when they violate rules and/or the terms of their volunteer agreement, which exist to protect the Department's operations, its staff, the animals, the public, and the volunteers themselves. This has occurred, for example, when volunteers have refused to follow staff instructions, interfered with transactions with the public, yelled at staff, entered a restricted area, or inappropriately touched a staff member. These occasions are rare – the vast majority of volunteers have a productive and positive working relationship with the Department – but when problems do occur, the Department must enforce its rules.

The Department wholeheartedly agrees that its volunteers provide an invaluable service to our City and our animals. I am hopeful that the upcoming revisions to the Department's volunteer agreement and materials and related clarifications will help resolve any further misunderstandings.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steve R. Houchin".

STEVE R. HOUCHIN
Deputy City Attorney

cc: Annette Ramirez, Interim General Manager