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Social Media Policies

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Oklahoma Association of Municipal Attorneys
2019 Spring Conference

so·cial me·di·a
/sōSHəl 'mēdēə/

noun

: forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (such as videos)








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Elected Officials

Citizens

Employees



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Elected Officials



3


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Social Media Policy for Elected Officials


- City of Norman's Proposed Elected Official Social Media Policy. Attachments A.
- IMLA Model Social Media Policy. Attachment B.
- The manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy. *Bond v. Floyd*, 385 U.S. 116, 135-36, 87 S. Ct. 339, 349, 17 L. Ed. 2d 235 (1966).
- In *Bond*, the Court held that an elected official's First Amendment rights were violated when the Georgia House of Representatives prevented him from taking office because of his statements concerning the Vietnam War.
- The Board's speech in expressing its opinion and publicly censuring Dillaplain is not conduct arising to a level that would deter a person of ordinary firmness from continuing to engage protected speech, at least with regard to a public official engaged in the political process. *Dillaplain v. Xenia Cmty. Sch. Bd. of Educ.*, 2013 WL 5724512, slip op. at *5 (S.D. Ohio 2013).

4


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Ward 4



Airbnb – Sharpe House



Ward 3



Facebook Live

5

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First Amendment Issues for Elected Officials

- *Holcomb v. Hickman, et al.*, Case No. CV-2019-276 TB (C.C.D.C. 2019) (deleting comments and turning off commenting on a Facebook page).
- *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019), *as amended* (banning an individual user from a Facebook page).
- *Knight First Amendment Inst. at Columbia Univ. v. Trump, et al.*, 302 F. Supp. 3d 541 (S.D.N.Y. 2018), *appeal docketed*, No. 18-1691 (2nd Cir. June 5, 2018) (banning individual users from the Twitter account "@realDonaldTrump").

Courts must examine the "totality of the circumstances"
Davison, 912 F.3d at 680

In the context of an alleged First Amendment violation, in particular, this Court has found that a challenged action by a governmental official is fairly attributable to the state when "the sole intention" of the official in taking the action was "to suppress speech critical of his conduct of official duties or fitness for public office." *Id.*




5

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TEXAS MUNICIPAL LAW BULLETIN

January 2019

1. To avoid federal law restrictions, keep personal social media entirely separate from governmental business and avoid referring to personal sites in official printed or web publications, or even when speaking to the public at meetings, news conferences, or other events.
2. Do not use personal social media sites as platforms for publishing governmental information or announcements.
3. Do not use official titles or seals, logos, or mottos as part of the name or design of personal social media pages.
4. Do not give or share control of personal media sites with other governmental officers or employees.
5. If you establish a social media site to interact with the public:
 - a. Consult with attorneys regarding the proper limits of what, if any, content can be banned and how to express the scope of permissible posts.
 - b. Clearly state any limits on the purpose of any public posts to the site, such as: "Constructive suggestions for how to keep parks clean."
 - c. Do not block individuals or remove specific posts without consulting a lawyer.



6

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Additional Concerns

Open Records

Record – "all documents, including, but not limited to, ... data files created by or used with computer software ... created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property." 51 O.S. § 24A.3(1).

Retention – Time limits for the destruction, sale, or other disposition of municipal papers, documents and records which are not mentioned in subsection A of this section may be determined and set by ordinance or resolution of the municipal governing body. 11 O.S. § 22-131(B).

City of Norman Resolution R-1112-9 – "all records, written and electronic, shall be retained for at least 1 year unless there is pending litigation, in which case it will be retained for at least 2 years after the ultimate disposition or the resolution of the litigation."



7

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Additional Concerns

Open Meeting

Meeting – “means the conduct of business of a public body by a majority of its members being personally together or, as authorized by Section 307.1 of this title, together pursuant to a videoconference.” 25 O.S. § 304(2).

Email – “Concerning the first requirement, the December 26 email constituted a quorum because Mr. Tussey sent the email to seven of the eight Board members. *Tuscola Wind III, LLC v. Almer Charter Twp.*, 2018 WL 3861678, slip op. at *5 (E.D. Mich. 2018).



Facebook – if an email sent to seven of eight board members can constitute a quorum, it is reasonable to conclude that a Facebook discussion that includes comments from a majority of a city’s councilmembers can also constitute a quorum.



8

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Citizens

9

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Dos and Don'ts

- Do** take control of social media accounts - see e.g., Attachment D – City of Norman’s Social Media Public Participation Disclaimer

Davison v. Plowman, 247 F. Supp. 3d 767 (E.D. Va. 2017), *aff’d*, *Davison v. Plowman*, 715 Fed. Appx. 298 (4th Cir. 2018) (county attorney did not violate resident’s First Amendment rights since off topic comment was removed pursuant to policy that was viewpoint neutral and reasonably related to purpose of the forum).

- Don't** engage in viewpoint discrimination.

Once the government permits discussion of certain subject matter, it may not impose restrictions that discriminate among viewpoints on those subjects whether a nonpublic forum is involved or not. *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 800, 105 S. Ct. 3439, 3448, 87 L. Ed. 2d 567 (1985).



10

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Employees



11

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On Duty

- *Snipes v. Volusia Cty.*, 704 Fed. Appx. 848, 850 (11th Cir. 2017) (termination of a police officer for, *inter alia*, making racially insensitive comments about the shooting death of Trayvon Martin while on duty).

Off Duty

- *Snipes supra* (termination of a police officer for, *inter alia*, making racially insensitive comments about the shooting death of Trayvon Martin while off duty).

Caveat – there must be some connection between the employee's off duty misconduct and the employer's interest.

Duty to Bargain

- *In the matter of the Arbitration between the City of Norman and IAFF Local 2067*, FMCS No. 17-52726-6 (enjoining the City from implementing a social media policy for members of IAFF Local 2067 until the parties engage in necessary collective bargaining regarding the terms and conditions of the social media policy).

12



QUESTIONS?

NormanOK.gov

13



Attachment A

CITY OF NORMAN

Social Media Policy for Elected Councilmembers

INTRODUCTION

The City of Norman (City) depends upon an environment of tolerance and respect for the achievement of its goals in serving the citizens of the City.

PURPOSE

Subsection b of Section 2-103 of the Code of Ordinances for the City requires that Council, “[c]onduct themselves so as to bring credit upon the City, setting an example of good, ethical conduct for all citizens of the community[.]” The purpose of this Policy is to outline the roles, responsibilities, and best practice recommendations for the use of social media by individual Councilmembers. This Policy seeks a balance between the First Amendment rights of elected Councilmembers and the public’s expectation that elected Councilmembers possess a high level of personal and professional integrity and refrain from engaging in conduct that reflects unfavorably on the City.

RESPONSIBILITY

Each Councilmember is individually responsible for ensuring compliance with this Policy.

DEFINITIONS

“Councilmember” as used in this Policy includes councilmembers.

“Social Media” is defined here as the use of third-party hosted online technologies that facilitate social interactions and dialogue. These online technologies are operated by non-city hosted services and are used by individual Council members to communicate with the public. These may include, but are not limited to, social networking sites, micro-blogging tools, audio-visual networking sites, blogs, etc.

“Official Social Media” means social media as defined above that is dedicated to engaging with a Councilmember’s constituency.

“Personal Social Media” means social media as defined above that is not dedicated to engaging a Councilmember’s constituency. It should be noted that personal social media may become a limited public forum if it is used to engage with constituents.¹

GENERAL PROVISIONS

¹ See e.g., *Davidson v. Loudoun County Board of Supervisors, et al.*, Case No. CIV-2016-00932 (E.D. Vir. 2016) (holding that an elected official’s personal Facebook page was a public forum because she sometimes used it to engage with constituents).

- A. While Councilmembers may maintain and use personal web pages and websites, blogs, microblogs, social networking sites and other forms of social media, their status as Councilmembers requires that the content of any postings on those social media sites or other web pages not be in violation of existing City ordinances, policies, directives, rules, or regulations. The City's image as an organization comprised of professionals is critical to maintaining the respect of its citizens and constituencies. Although Councilmembers may choose to express themselves by posting personal information upon electronic media sites through personal websites, social networking sites, blogs, microblogs, chat rooms, or other electronic means or by making comments upon electronic sites hosted by other persons, groups or organizations, care should be taken to ensure that this right of expression not interfere with the operation of the City. That is, although Councilmembers have the First Amendment right to free speech, the right is not absolute and extends only to matters of public concern. Therefore, Councilmembers should exercise professionalism and caution with respect to comments they post, particularly those comments concerning the City, fellow Councilmembers, other elected officials, City Staff, and the business of the City.
- B. This section describes acceptable and unacceptable uses of all social media by Councilmembers. Councilmembers should use their best personal judgment when using any form of social media and must ensure that their use does not violate this or any other City policy.
1. There is no guarantee of privacy for electronic communications through City systems or equipment. The City reserves the right to review and monitor all electronic records and communications, at any time, with or without notice, including individual user folders and other information stored on the City's electronic communications systems. In accessing the Internet, including social media sites, users should assume that all connections and sites visited using the City's network will be monitored and recorded. This examination helps to ensure compliance with City policies, assists when internal investigations must be conducted and supports the management of the City's information systems. Use of the City's electronic communication devices including, but not limited to, City-issued email accounts, Internet services, Intranet, City-owned lap tops and computers provided for remote use, and computer software constitutes acceptance of such monitoring. Content maintained electronically is also subject to the Oklahoma Open Records Act, 51 O.S. §§ 24A.1 et seq.
 2. All Councilmembers are expected and required to conduct themselves in a manner consistent with the City's policies and standards of conduct.
 3. Councilmembers must not reveal any confidential or privileged information about the City, its constituents, or its contractors. Councilmembers must be particularly careful to protect against the inadvertent disclosure of confidential information.

4. Councilmembers must not harass others regardless of the time, place, form, or manner in which the information is posted or transmitted. Comments may be deemed to violate this Policy even if the City's name or the name(s) of any individual is not specifically referenced.
5. Councilmembers should be honest and accurate when posting information or news, and if they make a mistake must correct the error as quickly as practical. Councilmembers should not post any information or rumors they know to be false about the City, its employees, constituents, Councilmembers, suppliers, vendors, contractors or any other entities or individuals.
6. Councilmembers may express only their personal opinions and should never represent themselves as a spokesperson for the City, their board or committee unless designated to do so. If the City is a subject of the content created by a Councilmember, the Councilmembers should be clear and open about the fact that they are a Councilmember of the City and should make it clear that their personal views do not represent those of the City, or its employees, Councilmembers, suppliers, vendors, or any other agent of the City unless designated to do so. Councilmembers who publish blogs or other online posts related to their role with the City should make clear that they are not speaking on behalf of the City (unless designated to do so). Further, a Councilmember's decision to express their personal opinions does not alleviate their responsibility as a Councilmember to take appropriate action under the circumstances, which may include, but not be limited to, taking action themselves or reporting an issue to the City Manager.
7. Councilmembers must also be aware that posting content regarding City-related matters in certain circumstances may result in the violation of the Oklahoma Open Meeting Act (OMA), 25 O.S. §§ 301 et seq., Councilmembers should consult the OMA for more information. The City Attorney may also be consulted regarding the OMA.
8. Councilmembers are expressly prohibited from using social media to engage in any activity or conduct that violates federal, state, or local law (e.g., software or data piracy, copyright or trademark infringement, child pornography, etc.).
9. Councilmembers are prohibited from using social media to engage in any activity that constitutes a conflict of interest.
10. Councilmembers should be mindful that residents, property owners and others come from all walks of life. Public comments, in any forum, that contain racial slurs, express bigotry toward a group based on their race, religion, national origin, sexual orientation, gender, gender identity or any

other legally protected classification shall be considered conduct unbecoming a Councilmember and shall constitute good cause for public censure.

11. Care should be taken to not leave the impression that a comment posted on a social media site is adequate legal notice to the City. Oklahoma law imposes an obligation on cities to either warn the public or repair the dangerous condition on public property within a reasonable time after proper notice. Proper legal notice of a dangerous condition requires filing the notice with the City Clerk or a City official designated as responsible to act on the notice. Leaving a false sense of proper legal notice delays appropriate action by City staff to post proper warnings to safeguard the public from a dangerous condition or delays other appropriate remedial action. Leaving a false sense of proper legal notice may also create legal issues for those who may believe they have taken adequate steps to pursue their claims. To avoid confusion of such issues, Councilmembers should refer the public to the normal channels for reporting issues such as non-working traffic signals, waterline breaks, stray animals, concerns with the City's contractors, etc.
 12. Councilmembers are prohibited from posting sexual content, sexual references or sexual innuendos, or links to any such material and content.
 13. Councilmembers are prohibited posting solicitations, advertisements or endorsements of any financial, commercial or non-governmental agency or entity.
 14. Councilmembers are prohibited from posting content that directly promotes or advocates violence or the threat of violence.
 15. Councilmembers are prohibited from posting content that contains personal attacks of any kind.
 16. Councilmembers are prohibited posting content that contains personal information (whether your own or someone else's), including home address, home or cell phone number, or personal e-mail address, in order to protect privacy.
- E. The City encourages anyone who uses social media in contravention of this Policy to be honest and admit an error as soon as it occurs. Although errors cannot always be erased, prompt notification can make a significant difference in the City's ability to correct or remedy related issues.
- F. Beyond the above general provisions, Councilmembers are strongly encouraged to consider the potential impact of their statements before making them. The City strives to be professional in its operations and processes. Posts that suggest a likelihood of more or less favorable treatment toward any individual or group of

individuals, e.g., based upon race, gender, national origin, sexual orientation, reflects poorly on the individual making an inappropriate statement as well as the City and its citizens. Further, comments suggesting such treatment can expose the City to liability and legal costs. All are strongly encouraged to carefully consider their comments before posting them.

ETHICS AND ELECTIONS RULES COMPLIANCE

All content posted on individual Councilmember social media sites shall comply with the City of Norman's Ethics and Election ordinances and Oklahoma law regulating elected officials.

RECORDS RETENTION ACT COMPLIANCE

City Resolution R-1112-9 requires that all written and electronic records be retained for at least one (1) year unless there is pending litigation, in which case it will be retained for at least two (2) years after the ultimate disposition or resolution of the litigation. Social media post regarding City business qualifies as a record under Resolution R-1112-9 and must be retained as set forth above. It is the responsibility of each Councilmember to comply with Resolution R-1112-9.

OPEN MEETING ACT COMPLIANCE

A quorum of lawmakers holding a discussion about public business through social media may constitute a meeting that is subject to the State of Oklahoma Open Meetings Act. The dynamic nature of social media and the volume of posts make it difficult to track who is involved in the discussion. It is the responsibility of individual Councilmember's to monitor posts and ensure that a majority of Councilmembers are not involved in a discussion of City business. Failure to follow open meeting act requirements may result in removal from office.

COMPLAINTS OR PROBLEMS OF MISUSE

Should any Councilmember become aware of a violation of this Policy, the Councilmember should report the violation to the City Manager or City Clerk.

QUESTIONS

Anyone who is unsure whether a particular posting or contribution to online social media violates this Policy is encouraged to seek the advice of the City Attorney.

PUBLIC COMMENTS

A social media page used to engage constituents, other Councilmembers, or the general public is a limited public forum under the First Amendment. This includes personal social media sites. Suppressing public comment in a limited public forum – e.g., prohibiting someone from accessing a social media page or posting a comment – may

violate the First Amendment. Note 1 supra. Councilmembers contemplating prohibiting someone from accessing a social media page or posting a comment are encouraged to seek the advice of the City Attorney

FEEDBACK

When soliciting feedback on social media sites, always provide an alternate mechanism for feedback, such as an email address. When posting information, provide an alternate source for the same information such as a link to the City's public website.

PUBLIC CENSURE

At the discretion of a majority of the Council, a Councilmember may be censured for failure to comply with this Policy. As used in this Policy, the term "censure" means an official reprimand or condemnation that interjects Council's voice into public discourse. A failure to enforce this Policy does not constitute a subsequent waiver of any violation of this Policy.

Attachment B

MODEL SOCIAL MEDIA POLICY FOR CITY, COUNTY AND LOCAL GOVERNMENTS

1.0 BACKGROUND AND PURPOSE.

- A. The City/County is committed to enhancing the traditional communication methods with its various constituents through the use of Social Media. This commitment primarily stems from public expectations, the capabilities of current technology, and the rapid growth of Social Media by other local, state, and federal government entities, all of which serve as an indication that Social Media can be used effectively to enhance communications.
- B. Social networking in government serves two primary functions: to communicate and deliver information directly to citizens to inform the public about government matters, and when appropriate in a designated or limited public forum to facilitate citizen involvement, interaction, and feedback on specific issues involving the government's business.
- C. This Policy is adopted to provide guidance and information both to the public and for the City/County's use of Social Media, including but not limited to, web and mobile phone applications, blogs, photo and video sharing sites, micro-blogging, social networking sites and wikis. Some of the platforms considered in this policy include but are not limited to Facebook, Instagram, Snapchat, Tumblr, Twitter, Flickr, Next-door, YouTube and similar platforms that provide information sharing platforms.
- D. While the City/County's website ([insert here the City/County website address]) is the City/County's primary Internet presence, the City/County recognizes that, when used appropriately, Social Media may be useful in furthering the goals of the City/County and the missions of its departments, (OPTION *insert* its boards, committees, and agencies) in informing and interacting with the constituents of the City/County.

2.0 DEFINITIONS.

Agents -- all City/County representatives, including its Employees and other agents of the City/County, including without limitation, independent contractors and anyone acting on behalf of, appearing to act on behalf of, or in the name of the City/County.

City/County Social Media Sites/Accounts – *Those pages, sections, or posting locations in social media websites established, managed or maintained by an Employee or Officer (or insert name of Department/Office/Board/ Agency) of the City/County authorized to do so as part of the Employee's or Officer's (Department's/Office's/Board/Agency) duties.*

Content - *any posts, writings, material, documents, photographs, graphics, or other information that is created, posted, distributed, or transmitted via social media.*

Custodian -*The [insert correct title such as Custodian of Records] is responsible for ensuring that all City/County records created or maintained by the City/County are retained according to the [insert appropriate state public records laws or other governing law] and the [Records*

Control Schedule established under state law] and are properly preserved or disposed of and these include the Content on City/County Social Media Sites.

Digital Identity – Information about a user of a social media site that differentiates that user from others.

Employees -- all City/County representatives and anyone employed by the City/County. The term “Employee” includes Officers unless specifically omitted in the text or the context requires their exclusion.

Officers – all City/County Elected and Appointed officials including all members of boards, committees and agencies of the City/County.

Social Media – internet and mobile-based applications, websites and functions, other than email with a focus on immediacy, interactivity, user participation, and information sharing. These venues include social networking sites, forums, weblogs (blogs, vlogs, microblogs), online chat sites, and video/photo posting sites or any other such similar output or format. Examples include Facebook, Instagram, Twitter, YouTube and emerging new web-based platforms generally regarded as social media or having many of the same functions as those listed

Social Media Account - any account established on ***Social Media***.

Social Media Administrator – The City/County ***Employee*** or Employees expressly designated by [insert here the title of the individual the City/County gives authority over social media, e.g., Mayor, City/County Manager, Communications Director, Department Director] to monitor, manage, supervise or control the City/County social media sites as provided in this policy.

3.0 SCOPE

This Policy applies to all City/County ***Officers, Employees*** and ***Agents*** when working with ***Social Media*** tools on behalf of the City/County, and applies to an ***Officer’s, Employee’s*** and ***Agent’s*** use of personal ***Social Media*** sites as addressed in this Policy,.

4.0 ADMINISTRATIVE ROLES AND RESPONSIBILITIES

Option 1: for Larger Cities:

4.1 The Public Media Office (or insert proper name of Office/Department). The Public Media Office is responsible for implementing this Policy and leading the City/County’s ***Social Media*** efforts for official City/County business. The Director of the Public Media Office shall serve as the ***Social Media Administrator*** of the City/County.

OR (OPTIONAL)

4.1 Each Department Director is responsible for implementing and complying with this policy, and to designate a ***Social Media Administrator*** for their department to act as the ***Social Media Administrator*** for the department.

4.2 The City/County’s Official Social Media Account. The *Social Media Administrator* is responsible for developing and administering the City/County’s presence on a *Social Media Account* that is the City/County’s Official Social Media Account or Site. The Social Media Administrator and employees of the Public Media Office (or employees of the (insert name) Department) shall review, monitor and enforce all approved *Social Media Accounts* and sites.

4.3 Departmental-Specific Social Media Accounts.

A Department may seek to develop its own departmental *Social Media Account* specific to the needs of the Department. On a case-by-case basis, the Social Media Administrator must review and approve or deny all requests for developing a Department’s own *Social Media Account*, as provided in Section 5 “The City/County Official Social Media Site and Other Specific Social Media Sites/Accounts”.

4.4 Existing Social Media Account/Platform. The *Social Media Administrators* (*Optional: The Social Media Administrator in each Department, as applicable*) must review existing departmental social media sites or tools that have already been established as of the effective date of this Policy to ensure that they are in compliance with this Policy. Within 60 days of the effective date of this Policy, the *Social Media Administrator* must approve or deny the existing department *Social Media* site or tools (*Option: must recommend approval or denial of the site or tool to the Mayor’s Communication Office.*) (*For Cities with departmental social media administrators – The department Social Media Administrator shall review the department Social Media site or tools and submit a written request for approval of such sites to [insert appropriate agency having charge of social media presence such as the Social Media Administrator or the Communications and Public Information Office or the Public Media Office] In the event the request is denied, the site or tool must be immediately taken down and its use discontinued as provided in Section 10.0 Deactivating a Social Media Account.)*

4.5 Additional duties of the Social Media Administrator (or the Departmental Social Media Administrator, as applicable).

The *Social Media Administrator* shall:

1. Ensure the City/County’s official *Social Media Account* is regularly maintained and kept current. (*Option: If department social media administrator add: “Department Social Media Administrators shall ensure that the department’s social media sites/accounts/platforms are regularly maintained and kept current.”*)
2. Review information posted to the department’s *Social Media* sites to ensure the *Content* is appropriate, professional, and consistent with the City/County’s policies and the purpose for which the site exists. Frequent review of sites that provide opportunity for comment or other interaction is essential. The *Social Media Administrator* must establish a schedule for the regular review of each site and submit the schedule for review and approval of the department director.

3. The [Department] **Social Media Administrator** shall keep the [city council, city manager, department's director] informed of the department's social networking tools and activities.
4. Communicate regularly with the **Custodian** of public records to insure that the **City/County Social Media Site** complies with any applicable public records laws.
5. Establish a process to ensure that all **Employees** are aware of and confirm their understanding of this policy.

4.6 City/County **Employees** and **Officers** are responsible for ensuring that all use and contributions to **City/County Social Media Sites** adhere to the standards of conduct and requirements as outlined in this policy and that their personal use adheres to the standards of conduct as regulated by this policy.

COMMENT: Any employee, agent, or official who is authorized to edit, post or alter content of a City/County Social Media site must agree in writing to comply with any training or other requirements, policies or restrictions and have on file in the office of the Administrator such written agreement before editing, posting or altering content on a City/County Social Media Site. In terms of personal use, it is not the intent of the City/County to restrict a person's First Amendment rights, but rather to ensure that Content posted by Officers, Employees or Agents clearly reflect that those comments are personal and not being made on behalf of the City/County unless authorized by the City/County (see Section 13.8 Personal Use of Social Media). Similarly, Officers, Employees and Agents are prohibited from disclosing confidential information except under polices and regulations that address disclosure of that information. Specific limitations are found in Section 6.11 Intellectual Property Rights and Confidential Information of this Policy.

4.7 The Social Media Administrator will be the coordinating authority for review and monitoring and enforcement of any approved City/County Social Media Sites. The [Mayor, City/County Manager, City/County Council] shall be the final decision-making authority for the approval or denial of any Social Media Sites and the use of such Sites by the City/County.

Option 2: for Smaller Cities:

4.1 The City/County Manager (*OPTIONAL - and each Department Director*) shall implement this policy, and broadly disseminate the Policy to inform **Employees** and Officers of these guidelines for creating, using and maintaining **Social Media** resources subject to this policy and to ensure that all **Employees** and Officers confirm they are aware of and understand this policy.

4.2 The City/County Manager must designate a person to act as **Social Media Administrator** and until a person has been designated the City/County Manager acts as the City/County's **Social Media Administrator**.

4.2.1 The ***Social Media Administrator*** is responsible for developing and administering the ***City/County Social Media Sites/Accounts*** and the use of those sites and must:

1. Develop and administer the City/County's presence on a ***Social Media*** site that is the City/County's official ***Social Media Site/Account***. City/County employees and departments are encouraged to contribute ***Content*** and ideas to the ***Social Media*** Site by contacting the ***Social Media Administrator***.
2. Review all requests to establish additional department-specific ***City/County Social Media*** Sites and recommend approval or denial to the Council. The ***Social Media Administrator(s)*** must review social media sites that have already been established to ensure that they are in compliance with this policy and must submit a request for approval of the Council/City/County Council Manager the continued use of those preexisting sites within 90 days of the effective date of this Policy. If the Council/City/County Manager does not approve the continued use of those preexisting sites within 120 days of the effective date of this policy those sites must be immediately taken down and their use discontinued as provided in Section 10.0 Deactivating a Social Media Site/Account of this Policy.
3. Ensure the ***City/County Social Media Sites*** are regularly maintained and kept current.
4. Review information posted to the ***City/County Social Media Sites*** to ensure the ***Content*** is appropriate, professional, and consistent with the City/County's policies and the purpose for which the site exists. Frequent review of sites that provide opportunity for comment or other interaction is essential and the ***Social Media Administrator*** must establish a schedule for the regular review of each site.
5. Communicate regularly with ***Custodian*** to insure that the site complies with any applicable public records laws.

4.3 City/County ***Employees*** and Officers are responsible for ensuring that all use and contributions to ***City/County Social Media Sites*** adhere to the standards of conduct and requirements as outlined in this policy, and that their personal use adheres to the standards of conduct as regulated by this policy.

COMMENT: Any employee, agent, or official who is authorized to edit, post or alter content of a City/County Social Media site must agree in writing to comply with any training or other requirements, policies or restrictions and have on file in the office of the Administrator such written agreement before editing, posting or altering content on a City/County Social Media Site. In terms of personal use, it is not the intent of the City/County to restrict a person's First Amendment rights, but rather to ensure that Content posted by Officers, Employees or Agents clearly reflect that those comments are personal and not being made on behalf of the City/County unless authorized by the City/County. Similarly, Officers, Employees and Agents are prohibited from disclosing confidential information except under polices and regulations that address

disclosure of that information. Specific limitations are found in Section 6.11 Intellectual Property Rights and Confidential Information of this Policy.

4.4 The Social Media Administrator will be the coordinating authority for review and monitoring and enforcement of any approved **City/County Social Media Sites**. The City/County Council/City Manger shall be the final decision-making authority for the approval or denial of any Social Media Sites and the use of such Sites by the City/County.

5.0 THE CITY/COUNTY OFFICIAL SOCIAL MEDIA SITE AND OTHER SPECIFIC SOCIAL MEDIA SITES/ACCOUNTS.

5.1 The official **City/County Social Media Site** is the primary tier of the City/County's **Social Media** presence. This tier includes any official City/County presence on a **Social Media Site**. City/County Employees, Officers and Departments are encouraged to contribute **Content** and ideas to this Site/Account by contacting the **Social Media Administrator** (Option: OR by contacting the Public Media Office

5.2 A Department may seek to develop its own Site or Account or Platform specific to its needs. Department-Specific **Social Media** sites should be focused and limited in scope and topic, and should complement rather than supplant the official **City/County Social Media Site** or existing web resources. General departmental pages and associated **Content** should be included and managed within the current **City/County Social Media Site**. On a case-by-case basis the **Social Media Administrator** must review and (Option: recommend) approve or deny all requests for developing additional **City/County Social Media Sites/Accounts/Platforms**, as follows:

- a. The department shall submit a request in writing on a form provided by the **Social Media Administrator**. The request shall state:
 - i. how or in what respect there is a clear benefit of specific stakeholder outreach that is not already met by the **City/County's Social Media Site**; and
 - ii. how the department has developed an effective strategy to develop and maintain the Site/Account/Platform.
- b. The Social Media Administrator will be the coordinating authority for review and monitoring and enforcement of any approved City/County Social Media Sites. The [Mayor, City/County Manager, City/County Council] shall be the final decision-making authority for the approval or denial of any Social Media Sites and the use of such Sites by the City/County.

5.3 Boards, Agencies, Committees and Commissions.

5.3.1 City/County Boards, Committees, Commissions and Agencies must comply with this policy and the [insert here the appropriate official such as executive liaison to each Board and Commission] is responsible for ensuring that any request for **Social Media** tools or resources made by any Board, Agencies, Committee, and Commission is coordinated with the **Social Media Administrator** and is acted upon.

5.3.2 A Board, Committee, Commission or Agency may seek to develop its own Site or Account or Platform specific to its needs subject to review and approval by the **Social Media Administrator** of appearance, general content and any vendor or third party that is to be used to assist in the development or operation of such site. Board-Specific **Social Media Sites** should be focused and limited in scope and topic, and should complement rather than supplant the **City/County Social Media Site** or existing web resources. General "departmental"-pages and associated **Content** should be included and managed within the current **City/County Social Media Site**. On a case-by-case basis the **Social Media Administrator** [Option – City/County Council/Manager] must review and (Option: recommend) approve or deny all requests for developing additional **City/County Social Media Sites/Accounts/Platforms**, as follows:

1. The board, committee, commission or agency shall submit a request in writing on a form provided by the **Social Media Administrator**. The request shall state:
 - a. how or in what respect there is a clear benefit of specific stakeholder outreach that is not already met by the **City/County's Social Media Site**; and
 - b. how the board, committee, commission or agency has developed an effective strategy to develop and maintain the Site/Account/Platform and has the budget to implement its plan.
2. The Social Media Administrator will be the coordinating authority for review and monitoring and enforcement of any approved City/County Social Media Sites. The [Mayor, City/County Manager, City/County Council] shall be the final decision-making authority for the approval or denial of any Social Media Sites and the use of such Sites by the City/County.

5.3.3 The state Open Meetings Act may apply to use of **Social Media** by individual members of a board or commission and may prohibit them from participating in postings or discussion threads on **Social Media** sites whether created and maintained by the board or commission of which they are a member or otherwise. Members of boards and commissions and their staff must comply with state law regarding Open Meetings and Public Information when using **Social Media**.

COMMENT: Any Question about usage of Social Media in any particular manner should be referred to the Social Media Administrator or legal counsel.

5.3.4 Any use of **Social Media** Sites shall not serve as a replacement for postings and notifications required by law except under and as allowed by those laws.

5.3.5 Boards, committees, commissions or agencies may utilize **Social Media** for gathering public comment and fostering public discussion related to their roles, provided that the use conforms to this policy and meets the following additional requirements:

- a. The request for comment or posting of discussion items is approved in a formal action of the Board at a posted meeting.
- b. The request for comment or posting of discussion items does not violate other laws or regulations such as those involving procurement.

- c. The use of Social Media Sites complies with the standards and best practices as provided in Section 6.0 Standards and Best Practices of City/County Social Media Sites.

5.3.6 Regular business of the board, committee, commission or agency may be posted to approved ***Social Media*** Sites by the appropriate [insert: staff liaison or person having that role] without formal action of the board, commission, committee or agency provided that posted documents are also available on the City/County's website. In general, it is preferred that a Board ***Social Media*** Site simply provide a link back to information and documents posted on the City/County website. "Regular business" is defined as the standard and routine activity of any Board, and generally includes agendas, minutes, presentation documents and backup items created during the course of regular Board proceedings. This may also include responses or clarifications of items of fact related to the Board (dates, times, published data, etc.).

5.3.7 Other than following a vote by a majority of the members to do so, under no circumstance should a board member, committee member, commission member post, or direct staff to post, statements of personal opinion held by individual members. When approval to post personal opinions or statements has been given those statements and opinions must be clearly identified as personal and not those of the entity of which the person is a member.

COMMENT: Board, Committee and Commission members are serving in official positions and acting on behalf of the City/County. As such, they speak at their meetings and on the record. Any response to comments on Social Media sites should be made through an official authorized by the board, agency, committee or commission to make such responses.

6.0 STANDARDS AND BEST PRACTICES OF CITY/COUNTY SOCIAL MEDIA SITES

The ***Social Media Administrator*** shall develop and provide detailed best practices guidance for the ***City/County Social Media Sites***, Accounts and Platforms. The following general standards apply to all ***City/County Social Media Sites***, Accounts and Platforms including departmental, committee, board, agency or committee sites.

COMMENT: On January 7, 2019, the 4th Circuit Court of Appeals in dicta discussed whether a government violates the First Amendment if it chooses a platform for social media use that includes private rules of conduct that if adopted by the government would violate the First Amendment. As this was only dicta, the discussion does not create authority binding any jurisdiction in the 4th Circuit, but offers cautionary advice in selection a social media platform and in negotiating with that platform as to what rules apply to the government's use. See: Davison vs. Randall, (4th Cir. No. 17-2002 and No. 17-2003, January 7, 2019).

6.1.1 Unless otherwise specifically noted, when the City/County establishes a City/County website or social media account it does so to communicate to the public, to inform and relay official City/County content. The City/County therefore regulates the ***City/County Social Media Sites*** that it maintains for the following reasons:

- Posts on *City/County Social Media Sites* appear to carry the approval of the City/County and unauthorized posts on those sites can confuse people as to whether the City/County endorses the post or if a specific post forms a position of the City/County and whether it is the City/County's official position,
- *City/County Social Media Sites* unless expressly noted, are not intended to operate as a traditional open public forum-as there are ample open forums for purposes of expressing opinions and views. Social media and Internet sites are many and varied and offer an ever expanding opportunity for expression over a multitude of platforms, in many different languages and countries all of which can be easily accessed through Internet searches.

6.1.2 Right to Remove Posts that Do Not Comply with the Rules of the Limited Public Forum. When the City/County Social Media Site has not been opened as a public forum or where the City/County Social Media Site has been opened as a limited public forum, the *Social Media Administrator* is authorized to edit and remove unauthorized Content or links posted on *City/County Social Media Sites* as provided in this Policy.

COMMENT: Where a City/County Social Media Site is not a public forum, any posts or comments by unauthorized persons must be removed to protect the integrity of the City/County's communications. Where a City/County Social Media Site is created as a limited public forum, its rules must be followed and posts that violate those rules can adversely affect the use of the forum, just as in a historical forum where speakers damage the value of the forum by violating rules such as those limiting the debate to a particular topic or as to time. For that reason, those posts need to be removed, subject to the requirements of this policy allowing for an appeal of that decision as provided in this policy.

6.2 Required Disclosures. A clear statement of the intent, purpose and subject matter of a Site, as well as a statement clearly articulating whether the site accepts comments and if so any restrictions that might affect the nature of the forum as either limited or open. The Site should prominently disclose that all *Content* and comments posted to the site are subject to public disclosure laws. Any other disclaimer or notice should be clearly posted on *City/County Social Media Sites*. The following statements must be included on each *City/County Social Media Site* following the City/County's description of the purpose of that social media site or tool and to use the site a user must acknowledge having been notified as described:

REQUIRED NOTICE

"In order to better serve its citizens, the City/County of _____ utilizes user engagement tools and websites, including social media channels, to provide citizens with information in more places and more ways than were traditionally available.

All Content of this site (insert the following if comments are accepted: and all comments submitted to this page) are public and are subject to disclosure pursuant to the state's Public (Records Law) Information Act. Please be aware that anything you post may survive deletion whether by you or others.

- Requests for emergency services should be directed to 9-1-1 not through this site. Individual complaints, concerns, or service requests will not be addressed via Social Media unless the City/County specifically identifies the site for that purpose.
- To protect your privacy and the privacy of others, please do not include sensitive personally identifiable information, such as social security numbers. The City/County hosted tools and websites should not be considered secure.
- If you have specific questions regarding a City/County activity or program that involves details you do not wish to share publicly, please contact (insert name of position or office or department) listed at [www._____](#).
- Posts to this site may be edited or removed under the City/County's Policy for City/County Social Media Sites if allowed by law and under this policy Section 6.1.2 (Right to Remove Posts that Do Not Comply with the Rules of the Limited Public Forum) and Section 6.20 (Removing Content, Posts or Comments of the Public) subject to the right of appeal under Section 8.6 (Right to Appeal Removal of Content or Application of this Policy to the Public) but may be preserved as a public record.
- The City/County also reserves the right to discontinue any or all *City/County Social Media Sites* at any time.
- Practical and legal considerations may sometimes constrain, prevent, or prohibit discussion by the City/County of certain topics, including, but not limited to litigation, pending investigations, and other topics through various media including social media.
- Following or "friending" persons or organizations is not an endorsement by the City/County and is only intended as a means of communication.
- Any references or links to a specific entity, product, service or organization posted by individuals on the City/County Social Media Sites should not be considered an endorsement by the City/County or its departments or Employees or Officers.
- The City/County does not review, sponsor, or endorse any other website(s) linked to its website or to City/County Social Media Sites. The views and opinions of authors expressed on those websites do not necessarily state or reflect the opinion of the City/County and may not be quoted or reproduced for the purpose of stating or implying any endorsement or approval of any product, person, or service by the City/County or its Employees or Agents.
- The City/County is not responsible for Content that appears on external links.
- The City/County is not responsible for and does not guarantee the authenticity, accuracy, appropriateness or security of any link, external website or its Content.
- Investors determining whether to invest or continue to invest in the City/County's debt offerings should not rely on information posted on the site in making their decisions to invest or not to invest; information regarding the City/County's financial position is posted at [insert website].

By accessing this site, posting or commenting I acknowledge having been advised of the foregoing."

COMMENT: A user who wishes to challenge this policy and who believes that the policy infringes that user's rights, may seek relief under Section 8.6 Right to Appeal Removal of Content or Application of this Policy to the Public. The City/County wants to inform the user of limitations and conditions on their use whether within the control of the [City/County/County] or

under the control of others. The City/County will not edit or delete any content unless authorized by this policy or allowed by law. Users should understand that third parties having control of a social media site may act to edit or delete content independently of the City/County and without the consent, authority or control of the City.

6.3.1 Solicitation of Public Comment – limited public forum.

Where comments are solicited or invited on the site the following statement must be included:

“The purpose of this site is to discuss matters of public interest in and to the City/County of [insert City/County name here] as identified and raised by the City/County for discussion. We encourage you to submit comments that are on topic, but please address your comments to the specific topic(s) discussed. This is a forum limited to the specific topics identified and raised by the City/County. Users who submit Content to this *City/County Social Media Site* agree they have read, understand and agree to the following terms and conditions by virtue of such use:

Terms of Use

1. I am submitting content voluntarily and on my own behalf.
2. The content I post reflects my own original thoughts or work.
3. I understand that the City/County has the right to re-post or share any Content, photos or videos that I submit on this or other *City/County Social Media Sites*.
4. I have read and understand the Policy, including the right of the City/County to remove, redact or archive Content as described in the City/County’s policy and as may be allowed by law.
5. I understand that any Content I provide may be considered a “public record” under state law.
6. I understand and agree that unless specifically identified as a resource for receiving requests for information under the state public information laws, *City/County Social Media Sites* are not proper vehicles for making requests for public information or public records under state law and any such requests must be made to the appropriate custodian of the records.
7. I understand and agree that my comments are subject to removal, redaction and archiving from this site and I understand that others’ comments are subject to removal, redaction or archiving if my or their comments contain:
 - comments not directly on the topic raised for discussion
 - obscene, indecent, or profane language, or pornographic images
 - direct threats,
 - hate speech that is directed at race, color, creed, sex, sexual orientation, national origin, ethnicity, age, disability, or gender identity,

- the solicitation, promotion or endorsement of specific commercial services, products or entities,
- links to any site or Content posted by automatic software programs (i.e. "bots"),
- the promotion or encouragement of illegal activity
- personally identifiable information or sensitive personal information.
- The promotion or endorsement of a political campaign or candidate
- Information that compromises the public safety or security of the public or security systems
- Information that directly interferes or compromises ongoing investigations, public safety tactics, or the safety of public safety officers
- Confidential or exempt information
- Appear to violate the-intellectual property right of the City/County or a third party

8. I also understand that the views and comments expressed on this site only reflect those of the comment's author, and do not necessarily reflect the official views of the City/County, its elected and appointed *Officers* and *Employees* or its departments and agencies.

9. Waiver of Liability.

Because various laws exist that create liability for various actions, including but without limitation defamation, invasion of privacy, false light, breach of contract, procurement violations, violations of due process among many potential areas of exposure for which the City/County accepts no responsibility based on the actions of others or for hosting this **Social Media Site**, I, for myself, successors and assigns, release and hold harmless and agree to indemnify the City/County, including its Officers and Employees, from any and all actions, claims, liabilities and damages of whatever kind and nature arising out of or in connection with my use of the City/County Social Media Site/Account.

By posting or commenting I acknowledge that I understand these terms of use.”

COMMENT: A user who does not wish to comply with the “Terms of Use” and who believes that the Terms of Use infringes that user’s rights may use other traditional means to communicate with the government. Alternatively, anyone may seek relief under Section 8.6 Right to Appeal Removal of Content or Application of this Policy to the Public. It is the intent to insure that all users are fully informed of limitations on their use that may not be entirely within the control of the [City/County/County] and to limit the forum under the law.

OPTIONAL

6.3.2 Solicitation of Public Comment – open public forum.

Should the City/County establish a City/County Social Media Site as an open public forum, removal or editing of Content is subject to the requirements of law.

COMMENT. A City/County should evaluate carefully if there is any reason for it to create an open forum for public comment on a City/County Social Media Site as there are ample options for others to establish those forums and to take ownership of the negative consequences of the unbridled commentary. This Model recommends against creating open forums by the City/County. The requirements of law include First Amendment jurisprudence that advises that censoring content generally requires a compelling governmental interest and will be reviewed by the courts using a strict scrutiny analysis.

6.4 Archiving Content. The City/County will archive *Content* in accordance with the Public Records Law. Any *Content* that is removed may also be considered “public records” and will be archived as required by law to the extent possible using then current reasonable options.

6.5 City/County and Departmental logo. Departments may use a departmental logo in their *Social Media Site/account*. Where appropriate for a particular site, social media pages will include the City/County’s logo. Page names should be descriptive of the department/division using the site.

6.6. Restricted Access Platforms. City/County departments may only create restricted access sites or subsites for internal use (i.e., for use to allow *Employees* to communicate among themselves) and only after approval by the City/County Social Media Administrator. When using platforms that limit access, the Social Media Administrator must identify an appropriate platform for use and establish the guidelines for access and monitor access for compliance.

COMMENT: Some social media platforms are designed primarily for personal use and as businesses and institutions sought to use these platforms, the providers developed features to distinguish personal use from business or institutional use with internal controls differentiating the users whether known as “pages” or “groups” in some platforms. This policy attempts to direct that any use having limited access features should not be created except for the internal use of a local government. Limiting access of the public to a site open to the public may violate the law and should be avoided.

6.7 Biographies used on City/County Social Media Sites. Departmental accounts that require biographies or other user specific information will read “[City/County of----, Department name]” and contain a link to the department’s website. Where possible, departmental user names should begin with [City/County name or other identifier of City/County].

6.8 Identification. All *City/County Social Media Sites* must clearly indicate that the Social Media site that is maintained by the City/County and must have appropriate City/County contact information prominently displayed.

6.9 Links. Links placed on *City/County Social Media Sites* should only link to a resource on the City/County’s website [at -----] a City/County-owned Web site, a state, federal or local government site, an educational Web site (.edu) or an organization with an official partnership or supportive business relationship with a City/County department or program, such as IMLA at www.imla.org.

6.10 Design. Design elements (logos, background, images) should be appropriate to the subject matter and consistent with the City/County's design guidelines, which are available from the Social Media Administrator [Option – or insert here the appropriate agency such as Communication and Public Information Office].

6.11 Intellectual Property Rights and Confidential Information. Information that is proprietary, copyrighted or any other intellectual property, attorney-client privileged, or information subject to state or federal privacy laws, and information not subject to disclosure under the [insert state here] Public Information Act (“confidential information”) must not be posted on *City/County Social Media Sites*. Any questions concerning this standard should be directed to the Social Media Administrator [Option - insert here the appropriate agency such as Communication and Public Information Office or the City/County Attorney’s Office]. An owner of copyrighted material or other intellectual property who believes the owner’s rights are infringed must promptly notify the Social Media Administrator. The Social Media Administrator must take appropriate action upon notification.

6.12 Data Tracking. Most social media sites offer some mechanism for capturing data or tracking user trends and activity. It is the responsibility of the *Social Media Administrators* to use these applications to ensure the most effective use of social media outlets

6.13 References, Links and Embedded Content.

(a) Any references or links to a specific entity, product, service or organization posted by individuals on the *City/County Social Media Sites* must not be considered an endorsement by the City/County or its departments or *Employees*.

(b) The City/County should not sponsor or endorse any other website(s) linked to its website or to *City/County Social Media Sites*. The views and opinions of authors expressed on those websites do not necessarily state or reflect the opinion of the City/County and may not be quoted or reproduced for the purpose of stating or implying any endorsement or approval of any product, person, or service by the City/County or its *Employees* or *Agents*.

(c) The City/County is not responsible for *Content* that appears on external links.

(d) The City/County is not responsible for and does not guarantee the authenticity, accuracy, appropriateness or security of any link, external website or its *Content*.

(e) The City/County reserves the right to and may delete links and embedded Content that violate the City/County’s *Social Media* policy.

6.14 Security and Privacy Risks.

Applications (such as streaming video, music, photos, and subscriptions to RSS feeds) that may be useful to a *City/County Social Media Site's* mission can cause clutter and security risks. An application should only be used to serve a City/County purpose and add to the user experience, and only if it comes from a trusted source and has gone through the approval process outlined in this policy. An application may be removed at any time if it causes a security breach or contains or is suspected of containing a virus without notice. Where Social media sites are hosted by third parties, they are governed by those parties' privacy policies. Additionally, the *City/County Social Media Sites* are governed by the City/County's privacy policy and state laws.

6.15 Employee Requirements for the City/County's Social Media Sites.

6.15.1 Employees responsible for setting up or maintaining City/County Social Media Sites must use their City/County issued email accounts in order to conduct municipal social media operations in a manner that is cybersecurity prudent and more password secure. By operating social media platforms using only public emails, the City/County's IT Department is able to better control accounts in the event that a rapid change must be made.

COMMENT: Some Social Media Sites require individuals to establish a site rather than a business or organization; similarly, organizational sites require identifying passwords and other elements of digital identity to operate. Because personnel working for the City/County/County often change positions, duties and employment, the City/County/County must retain control over *Social Media Sites* created in its name or on its behalf and for that reason all necessary information to retain that control must be provided to the Social Media Administrator or other appropriate official to allow continuing use by the City/County.

6.15.2 Social Media Administrators and Employees authorized as part of their official duties to post information, make comments, and send messages to the public on a department's Social Media Site must set up the account using the City/County [department's] name where a user creates a business account in the user's name to facilitate transparency in communications. Accounts established under this provision are City/County owned accounts and belong to the City/County.

COMMENT: Facebook is an example of a platform that may require a business account to be established in a user's name rather than in the institution's name.

6.15.3 An platform requiring a user to create a business account in the user's name established by an *Employee* under this policy must:

1. Contain the *Employee's* name.
2. Be created using the administrator or *Employee's* City/County issued email address.
3. Be set up so that the page does not allow "wall posts" or "friending" the *Employee*.
4. Be used solely for City/County business in connection with the *Employee's* department's Facebook page, and must not allow comments or "friending" the administrator or *Employee*.
5. The *Employee* must comply with the provisions of this policy in Section 13.0 (EMPLOYEE OBLIGATIONS AND RESTRICTIONS IN PERSONAL USE OF SOCIAL MEDIA) and provide the required information to the specified officials.

6.15.4 There is no reasonable expectation of privacy associated with the administration of a *City/County Social Media Site* or an account established under this policy.

6.15.5 All social media interaction involving a *City/County Social Media Site* or account may be subject to relevant records retention law and FOIA/open records statutes.

6.15.6 Upon employee termination, retirement, or other form of separation from employer or change in job duties, account ownership remains the City/County's and the *Employee* must take all necessary steps to protect the City/County's interest in the site or account.

6.15.7 Administrators and City/County Employees and Officers must not form groups/pages that are private or closed to the public under Section 6.6 Restricted Access Platforms without the express approval of the [Council, Mayor, City/County Manager]. It is important to note that in the event that such a group is created, it may be subject to records retention, FOIA/open records statutes and other applicable law.

6.15.8 *Employees* using City/County Social Media Sites, whether as an administrator or as a responder to a posting, must follow these guidelines:

- a. Unless posting or responding as the site administrator, *Employees* must be clear about his/her role in regards to the subject and the extent of the Employee's authority to speak for the City/County.
- b. Write and post about his/her area of expertise, especially as related to the City/County and daily assignment(s). When writing about a topic for which an *Employee* is not the City/County's expert, make this clear to readers.
- c. Keep postings factual and accurate. If a mistake is made, admit to it and post a correction as soon as possible.
- d. Reply to comments in a timely manner, when a response is appropriate. When disagreeing with others' opinions or providing comments, be sure that the comments are meaningful, respectful and relevant to the topic.
- e. Understand that postings are widely accessible, not retractable, and retained or referenced for a long period of time, so consider content carefully.
- f. Ensure comments do not violate the City/County's privacy, confidentiality and applicable legal guidelines for external communication. Never comment on anything related to legal matters, litigation or any parties with whom the City/County may be in litigation without the specific approval of the law department.
- g. Refrain from expressing personal opinions or positions regarding policies, programs or practices of other public agencies, political organizations, private companies or non-profit groups.

6.15.9 Employees who fail to comply with this policy, including without limitation the guidelines under Section 6.15 Employee Requirements for the City/County's Social Media Sites of the policy are subject to discipline up to and including termination of employment. In addition the City/County may sue to enjoin compliance with this policy and those provisions or for damages.

6.15.10 All Employees must sign a written acknowledgement that they have received, read, understand and agree to comply with this Policy.

6.16 PRIVACY

All users of *City/County Social Media Sites* are subject to the site's own privacy policy as well as privacy laws applicable to the City/County. The City/County has no control over third parties' privacy policies or modifications to such policies.

6.17 DATA OWNERSHIP AND COPYRIGHT POLICY on City/County Social Media Sites/Accounts

The City/County retains the rights to all text, photographs, graphics of any kind and other *Content* found on *City/County Social Media Sites* that was produced by the City/County. All social media communications or messages composed, sent, or received on City/County equipment in an official capacity are the property of the City/County. The City/County maintains the sole property rights to any image, video or audio captured while a City/County *Employee* is representing the City/County in any capacity even if disseminated over *City/County Social Media Sites* whether the dissemination is authorized or unauthorized unless a release of those property rights has been specifically granted.

6.18 USE OF CITY/COUNTY SEAL OR LOGO

Any use of the City/County Seal or Logo is prohibited without the express written permission of the City/County.

6.19 Third Party Copyright or other Intellectual Property Interest

Content that violates a legal ownership interest of any party or copyright or other intellectual property should not be posted or submitted in any form without permission of the holder of those rights. Any person redistributing information subject to a third party copyright or other intellectual property via the *City/County Social Media Sites* must adhere to the terms and conditions of the third party intellectual property or copyright holder and upon request of the holder of the copyright or owner of other intellectual property may be removed from the site.

6.20. Removing Content, Posts or Comments of the Public.

When the City/County determines to remove Content, a Post or a Comment of a person who is not an Employee and who was not acting on behalf of the City/County, the *Social Media Administrator* must endeavor to contact the person promptly to notify them of the action. The person may appeal the decision under Section 8.6 Right to Appeal Removal of Content or Application of this Policy to the Public of this policy. When a post is removed because it is a potential security breach or may contain a virus, the notice under this Section is not required, but the person responsible for the post may appeal the decision under Section 8.6 Right to Appeal Removal of Content or Application of this Policy to the Public.

COMMENT: This Section addresses posts and rights to appeal applicable to the public. When an Employee or Officer has violated this policy, the Employee or Officer may be disciplined and

applicable grievance procedures and disciplinary procedures will apply and the procedures outlined in Section 8.6 Right to Appeal Removal of Content or Application of this Policy to the Public may not be the only or appropriate process.

7.0 RECORDS RETENTION, PUBLIC RECORDS AND OPEN MEETINGS

7.1 Records Retention. *Custodian* must ensure that *City/County Social Media Sites* meet the requirements of law regarding record retention, disposal and retention schedules. Departments maintaining *City/County Social Media Sites* or using social media tools must preserve records as required by law for the required retention period in a format that preserves the integrity of the original record and is easily accessible. Further, the Social Media Administrator, or any Employee may only destroy, transfer, or otherwise dispose of records in accordance with records disposition schedules.

7.2 Open Records. State law governs whether content in *City/County Social Media Sites*, including a list of subscribers and posted communications, is a public record. The Social Media Administrator, or the appropriate department, board, commission or committee of the City/County maintaining the account or site is responsible for working with the Custodian in responding completely and accurately under the requirements of State law to any public information requests for information on social media. [Insert the following if required by state law or local policy: **Content** must be maintained in an accessible format so that it can be produced in response to a request. Difficulty in accessing the information does not excuse compliance.] *City/County Social Media Sites* must offer notice to users that their use of *City/County Social Media Sites* may be subject to public information requests and that their identifying information and posts to *City/County Social Media Sites* to the extent required by law must be disclosed. An Employee who removes, deletes or redacts Content from social media may be destroying a public record if such record is not properly archived and made available for public inspection. [**Note:** The requirements of state law may extend to a person’s private account.]

7.3. Open Meetings and Public Business. State law governs whether communications must be discussed in an open meeting or constitutes a meeting. Communications about public business may come under the state Open Meetings law. **Employees** and members of any council, board, committee, commission or agency must comply with state law and must not use *City/County Social Media Sites* to discuss matters that can only be discussed in an open meeting under the state law regulating Open Meetings. A member of a public body such as a board member who “likes,” comments, shares, tweets, or otherwise engages in another board member’s **Content** on social media may be communicating City/County business and the state law may apply.

COMMENT: Any question about usage of Social Media in any particular manner should be referred to the Social Media Administrator or legal counsel.

8.0 LIMITATION ON LIABILITY OF CITY/COUNTY

8.1. The City/County strives to post accurate and relevant *Content*, but does not guarantee the accuracy of any information posted on *City/County Social Media Sites* and assumes no liability for damages resulting from reliance on any inaccuracies.

8.2. The City/County does not guarantee that *City/County Social Media Sites* will be uninterrupted, permanent or error free.

8.3. The *City/County Social Media Sites* should not be considered by investors determining whether to invest or continue to invest in the City/County's debt offerings; information regarding the City/County's financial position is posted at (INSERT WEBSITE).

COMMENT: Regulations associated with the issuance of municipal debt apply to the government's disclosure and continuing disclosure requirements. Local governments are encouraged to review those requirements with their bond counsel and ensure that this policy does not conflict with those requirements and that they have established the appropriate disclosure mechanisms.

8.4 *City/County Social Media Sites* are not intended to operate as traditional open public forums [OPTIONAL: unless specifically designated as such]. When the City/County opens the site for public comment it does not intend to open the site for any and all purposes but to open the site for limited discussion of only those topics specified by the City/County on that site. In some instances sites may be non-public forums, that is, not open to public comment at all, and in other instances, sites may be designated limited public forums and their purpose is only to advance the business purposes of the City/County on those specific topics.

COMMENT: This Model urges local governments that establish Social Media Sites to only create non-public forums or limited public forums. While any public forum creates risks of litigation over its use, open public forums seem to involve more litigation than others regardless of good intentions and noble motives.

8.6 Right to Appeal Removal of Content or Application of this Policy to the Public.

8.6.1 When a post or comment has been removed or edited, anyone aggrieved other than an Employee as provided in 8.6.3 below may seek to have the *Social Media Administrator* reconsider the decision to edit or remove a comment by providing the *Social Media Administrator* with a written request stating the reason or reasons why the comments do not fall within those limitations established in this policy or offer other bases to establish a right to publish the comments or other communications on the *City/County Social Media Site*. The *Social Media Administrator* or other appropriate official must render a written decision on the request one business day (excluding official City/County Holidays) of receipt of the request noting the basis for the decision. The decision of the Social Media Administrator or other appropriate official shall be the final administrative decision of the City/County.

COMMENT: The authors have used one business day to comply with the requirements of *Freedman vs. Maryland* and its rules regarding prior restraint in an effort to ensure a prompt review. Using a longer time may be permissible, but users are encouraged to consider carefully adopting a longer time period for response.

8.6.2 When a person other than an Employee as provided in 8.6.3 below believes this policy violates their rights in ways other than set out in 8.6.1, that person may seek to have the Social Media Administrator review all or part of the policy as applicable to that person by providing the Social Media Administrator with a written request stating the reason or reasons why the policy violates the person's rights. The Social Media Administrator must render a written decision on the request within 5 business days (excluding official City/County Holidays) and give the bases for the decision. For good cause, the Social Media Administrator may extend the time for rendering a decision by 5 additional days. The decision of the Social Media Administrator shall be the final administrative decision of the City/County.

8.6.3 The rights to appeal created in this Section do not apply to an *Employee* when the *Employee* is acting as a representative of the City/County and only apply when the *Employee* is acting in the *Employee's* capacity as a citizen and when exercising the rights of a citizen. An *Employee* who feels aggrieved by any action under this policy not covered by this Section should seek review through established grievance procedures or through the *Employee's* chain of command.

9.0 Transferring Ownership, Administrative Rights and Responsibilities for a Social Media Site Account

When the Social Media Administrator or an Employee needs to make a change to the administrators responsible for the *City/County Social Media* account, the following actions shall occur:

- Notify the City/County's Social Media Administrator (*or insert appropriate Office of the City/County*) before the change needs to occur. Include whether the change in ownership is to a different administrator or to an entirely different department or board, as applicable, within the City/County
- The new administrator shall be given all administrative rights to the social media site/account and the administrator's digital identity
- Administrative rights for the departing administrator must be revoked immediately when such administrator separates from service or is transferred to a different role.
- Any Employee who improperly uses administrative rights to a City/County Social Media Site while employed may be disciplined up to and including termination and any person who having left employment improperly uses administrative rights to a City/County Social Media Site shall be prosecuted to the fullest extent of the law.

COMMENT: In some cases an act that violates provisions of this Policy may be illegal by virtue of existing federal, state or local law. The jurisdiction should consider whether it needs to pass legislation to make other acts illegal to protect against employees or others violating the City/County's rights or harming others through the use of the City/County's *Social Media Sites* and platform.

10.0 Deactivating a Social Media Site/Account

If a decision is made by the (*insert appropriate administrator, such as the City/County Council or City/County Manager or Social Media Administrator*) to deactivate a social media site/account, because it is no longer of use, or accomplishing the goals of the City/County or Department or Board, or otherwise does not comply with City/County policy, the following actions shall occur:

- Confirm all public records management to preserve content related to the site/account has occurred
- Set a time-line for deactivating the site
- Develop a “sign-off” message to post on the site that includes when the site shall be closed and a “sign-off” message to post during the final days/weeks
- Confirm to the City/County manager (*or insert social media administrator or particular office of the City/County*) once the site has been deactivated that the site is completely deactivated
- Determine whether to protect the site name by keeping it active to prevent use of the City/County’s name for improper purposes and upon a determination that it is necessary to protect the site name take all necessary action to do so.

COMMENT: The City/County should consider keeping the site account name active to protect against a use of that name in a fraudulent or improper manner.

11.0 USE OF CITY/COUNTY SOCIAL MEDIA SITES IN TIMES OF DISASTER OR EMERGENCY

In disaster or emergency situations, the [insert appropriate official or agency here] may assume control of **City/County Social Media Sites** to ensure that communications are managed appropriately. The **Social Media Administrator** either directly or under the direction of the [insert appropriate official or agency from first sentence] must facilitate use of the City/County’s **Social Media Sites** to ensure timely dissemination of information during the emergency.

12.0 EMPLOYEE OBLIGATIONS AND RESTRICTIONS IN OFFICIAL USE OF CITY/COUNTY SOCIAL MEDIA SITES/ACCOUNTS

12.1 Employees assigned to maintain City/County **Social Media Sites/accounts** must adhere to the principles articulated in this policy. Non-exempt **Employees** must not work on departmental **Social Media Sites/accounts** during off-duty hours unless specifically pre-approved to do so in writing by the employee’s supervisor. All such time worked outside the employee’s normal work schedule must be reported and included in the employee’s regular work week. If an **Employee** is in a non-exempt position, any work in excess of 40 hours will be paid overtime either as compensatory time or as required by law and City/County policy.

COMMENT: The Fair Labor Standards Act provides how time must be calculated, by whom and how overtime is accrued and must be paid. This policy does not intend to alter City/County policies regarding overtime.

12.2 City/County resources, work time, social media tools, and a City/County *Employee's* official position must not be used for personal profit, private gain or loss, or business interests or to participate in political activity. For example, a building inspector may not use the City/County's logo (or its likeness), email, or work time to promote a side business as a plumber or support a political candidate.

COMMENT: In many jurisdictions, ethics laws will apply to an *Employee's* use of the *Employee's* work time or official position and this policy intends to harmonize with those laws to prevent the abuse of a person's public employment or official position. The activity described in this paragraph may be unlawful under other law.

12.3 An *Employee's* use of City/County resources or equipment, including the Internet or *City/County Social Media Sites* is not private and an Employee has no expectation of privacy while using the Internet or the *City/County Social Media Site*. An *Employee's* use may be investigated and monitored at any time.

COMMENT: Because a person's browsing history may be a public record, Employees should be cognizant that in addition to City/County officials having access to their use of the Internet and *City/County Social Media Sites*, the public may also have a right to access information regarding their use.

Optional Provision:

[**12.4** City/County resources, work time and social media tools may be used to a limited extent pursuant to the terms of any applicable Collective Bargaining Agreement and for concerted activity protected by federal, state or local law.]

COMMENT: The National Labor Relations Act does not apply to local governments. 29 U.S.C. §§ 151-169, §152(2)(the "Act"). A decision applying the Act to Chipotle Services LLC, (NLRB Cases 04-CA-147314 and 04-CA-149551, 364 NLRB No. 72, August 18, 2016) applied the Act to a private employer and concluded that the employer's Social Media Policy violated the Act and that a clause generally asserting that the policy did not restrict any activity that is protected by the act did not cure the unlawful provisions of the Social Media Policy. Although the Act does not apply to local governments, there may be laws that extend the provisions of the Act to local governments in some states and the provisions of a Collective Bargaining Agreement may also apply and for that reason we have included language in brackets that a City/County may wish to insert in its policy.

12.5 Employees shall protect all confidential and exempt information, including all sensitive information relating to City/County business, its employees or citizens, as required by law or policy.

13.0 EMPLOYEE OBLIGATIONS AND RESTRICTIONS IN PERSONAL USE OF SOCIAL MEDIA

13.1 Preamble. The City/County recognizes that many City/County *Employees* use Social Media tools such as Facebook in their personal lives. Therefore, this policy provides guidelines for City/County *Employees* when they communicate on Social Media sites as a private citizen

where doing so may be considered a violation of their terms of employment not in an effort to stifle their rights of free speech, but to ensure that when they are speaking as private citizens that they clearly communicate their status in doing so and do not violate laws and rules of employment designed to protect and maintain the stability and integrity of the workplace, to protect confidential information, to adhere to the rules of ethics, public records laws and open meeting law requirements among other compelling governmental interests

13.2 Personal or non-official use of social media is the day-to day use of social media sites by employees that is not related to official duties. Consistent with the City/County's policies on use of the City/County's telephone and email systems, incidental and occasional personal use of social media is permitted during work hours provided it is very limited in duration and does not have a detrimental effect on employee productivity.

13.3 Prohibition on using personal and business accounts tied to City/County. Personal or private business venture social media account names must not be tied to the City/County. For example, [insert an appropriate example here such as City/CountyofHoustonCop or NYCity/CountyFirefighter] would not be an appropriate personal account name.

13.4 If commenting on City/County business, **Employees** must use a disclaimer, which establishes that their comments represent their own opinions and do not represent those of the City/County.

13.5 Employees must not attribute personal statements or opinions to the City/County when engaging in private blogging or postings on social media sites and if through their identification or posts any confusion as to whether their statements might be attributable to the City/County they must clarify that their posts are their own and not those of the City/County. Where confusion or doubt is likely to arise regarding the personal nature of social media activities, an employee must include a disclaimer clarifying that the social media communications reflect only the employee's personal views and do not necessarily represent the views of the City/County or the employee's department or board or agency, as applicable. A clear and conspicuous disclaimer will usually be sufficient to dispel any confusion that may arise.

13.6 Employees must not use their City/County email account or password in conjunction with a personal social networking site.

13.7 Use of Non-Public Information: Employees must not use nonpublic information to further their own private interest (gain or loss) or that of another, whether by engaging in financial transactions using such information, through advice or recommendation, or through unauthorized disclosure. Further, employees shall not make intentional, or careless or unintentional disclosures of non-public information, unless the disclosure is authorized by law. Unauthorized disclosures can include, but are not limited to, the unauthorized dissemination of confidential, proprietary or privileged information.

COMMENT: In many jurisdictions, ethics laws will apply to an Employee's use of non-public information and this policy intends to harmonize with those laws to prevent the abuse of a person's public employment or official position. The activity described in this paragraph may be

unlawful under other law and if not, the jurisdiction adopting this policy should consider making the conduct punishable both civilly and criminally.

13.8 Personal Use of Social Media. The City/County respects its **Employees** 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/County requires **Employees** to act in a prudent manner with regard to website and internet postings that reference the City/County, its personnel, its operation or its property. The following guidelines apply to personal communications using various forms of social media:

- a. The City/County expects its **Employees** to be truthful, courteous, and respectful toward supervisors, co-workers, citizens, customers, and other persons or entities associated with or doing business with the City/County. When a person can be identified as a City/County Employee or Agent, those **Employees** and **Agents** must not engage in name-calling or personal attacks or other such demeaning behavior if the conduct would adversely affect their duties or workplace for the City/County. This Section and its limitations apply when the action of the Employee adversely affects the Employee's work, job duties or ability to function in the Employee's position or creates a hostile work environment.
- b. **Employees** and **Agents** and others affiliated with the City/County must not use a City/County brand, logo or other City/County identifiers on their personal sites, nor post information that purports to be the position of the City/County without *prior* authorization [or unless authorized by federal, state or local law or the specific terms of an applicable Collective Bargaining Agreement].

COMMENT: The National Labor Relations Act does not apply to local governments. 29 U.S.C. §§ 151-169, §152(2)(the "Act"). A decision applying the Act to Chipotle Services LLC, (NLRB Cases 04-CA-147314 and 04-CA-149551, 364 NLRB No. 72, August 18, 2016) applied the Act to a private employer and concluded that the employer's Social Media Policy violated the Act and that a clause generally asserting that the policy did not restrict any activity that is protected by the act did not cure the unlawful provisions of the Social Media Policy. Although the Act does not apply to local governments, there may be laws that extend the provisions of the Act to local governments in some states and the provisions of a Collective Bargaining Agreement may also apply and for that reason we have included language in brackets that a City/County may wish to insert in its policy.

- c. **Employees** and **Agents** are discouraged from identifying themselves as City/County employees when responding to or commenting on blogs with personal opinions or views. **Employees** must not use their City/County title when engaging in personal use of social media. If an employee chooses to identify him or herself as a City/County of _____ employee, and posts a statement on a matter related to City/County business, a disclaimer similar to the following must be used:
"These are my own opinions and do not represent those of the City/County."
- d. Incidental and occasional access to personal social media websites during work hours may be permitted, but **Employees** must adhere to the guidelines outlined in the [*insert proper name of City/County's Computer Use policy and the City/County's Respectful*

Workplace policy]. Employees should also ensure that they do not violate the City/County's ownership interests in any **Content** posted by the **Employee**.

- e. There may be times when personal use of social media (even if it is off-duty or using the **Employees'** and **Agents'** own equipment) may affect or impact the workplace and become the basis for employee coaching or discipline. Examples of situations where this might occur include but are not limited to:
 - Friendships, dating or romance between co-workers
 - Cyber-bullying, stalking or harassment
 - Release of confidential or private data
 - Unlawful activities
 - Misuse of City/County-owned social media
 - Inappropriate use of the City/County's name, logo or the employee's position or title
 - Using City/County-owned equipment or City/County-time for extensive personal social media use
 - Violation of law, whether federal, state, local or a City/County policy.
- f. Each situation will be evaluated on a case-by-case basis because the laws in this area are evolving. **Employees** are encouraged to discuss types of activities that might result in discipline with [insert appropriate title or position such as: their supervisor, or the Human Resources Department].

14.0 Violation of Policy by Employees.

Violations of this policy are considered misconduct and may result in discipline up to and including indefinite suspension or termination as authorized or permitted by law or policy.

COMMENT: Employees should also be aware that some conduct discussed in this policy may violate other laws for which there are criminal or civil penalties. Adoption of this policy should not be seen nor is it intended to vary the terms or requirements of other laws governing behavior in the workplace or behavior outside the workplace but which affects the workplace.

15.0 Violation of Policy by Members of City/County Council, Boards, Committees, Commissions or Agencies.

Violations of the policy by members of the City/County council, its boards, committees, commissions or agencies may be deemed acts of malfeasance and cause for sanctions including removal from office, as appropriate, authorized or permitted by law or policy. In addition, the City/County may seek other appropriate relief including damages or an injunction to enforce compliance.

COMMENT: Each jurisdiction operates under laws that govern discipline of public officials, whether elected or appointed, including removal from office. This policy intends to harmonize with those laws and to require all public officials to follow the terms of this policy. Often City/County officials are indemnified for their actions as officials and the City/County should consider whether this indemnification should extend to intentional violations of this Policy.

CAVEAT: Oftentimes cities and counties provide resources to Constitutional Officers; for example, the Sheriff, judges, courts, among others. The authority of a city or county to discipline these officers may not exist and the city or county may have limited authority to require compliance with a policy such as this. Each jurisdiction adopting this policy should consider carefully whether to apply the policy to those officials and how it might do so; for example, offering a system to those officers on the condition that the officers comply with this policy. Nevertheless, each city or county that adopts this policy should seek legal advice as to the extent of its authority over those who are not direct employees or officers of the city or county and what recourse the city or county may have for violations by those officers and their employees.

16.0 Controlling Authority

This policy does not amend any duly adopted law or ordinance of the City/County except those that are specifically noted as follows:

[Insert here any prior social media policy or other law that the City/County intends to repeal or amend by adoption of this policy and note the action to be taken; i.e., repeal or amendment.]

17. Severability and Savings.

If any part or provision of this policy or the application to any person or circumstance is held invalid or unconstitutional, such declaration shall not affect the other parts or provisions or application of the policy which can be given effect without the invalid or unconstitutional part or provision or application, and are therefore deemed severable.

EFFECTIVE DATE. This Policy shall become effective on _____ [Option - immediately upon adoption].

Attachment C

SOCIAL MEDIA: THINK BEFORE YOU BLOCK

In a 2017 First Amendment case, *Packingham v. North Carolina*, the U.S. Supreme Court opined that social media is, “one of the most important places to exchange views.” In that decision, the Court struck down as overly broad a state law that barred sex offenders from accessing many websites including sites such as Facebook and Twitter. However, the decision acknowledged that “[t]hrough the issue is not before the Court, it can be assumed that the First Amendment permits a State to enact specific, narrowly tailored laws that prohibit a sex offender from engaging in conduct that often presages a sexual crime, like contacting a minor or using a website to gather information about a minor.” The *Packingham* case is important because for the first time the Court recognized that the First Amendment applied to limit government restrictions on social media access.

Increasingly, constituents engage with public officials through platforms such as Facebook and Twitter. In January, the U.S. Court of Appeals for the 4th Circuit ruled on important free speech implications of social media use. In *Davison v. Loudoun County*, a three-judge panel of the court unanimously held that an elected county board supervisor violated the First Amendment when she blocked a constituent from a personal Facebook page because the constituent had accused the Board of corruption. The court:

- 1) Held that the supervisor’s personal Facebook page became a governmental forum subject to the First Amendment because the supervisor picked a name for the page that included her official title, (“Chair’s Facebook Page”), labeled at least part of the site as a “government official page,” which included her official contact information and other information about the board, promoted her personal page in an official newsletter, invited her constituents to comment about government issues on her personal site, shared control of the page with her government chief of staff, and used the Chair’s Facebook Page to keep constituents informed of board events and issues.
- 2) Discussed at length whether the Chair’s Facebook page should be analyzed as a traditional public forum (having very strong First Amendment Protections) or only a limited public forum, to which public access could be restricted to within the limited purposes of the site, but ultimately held that the distinction did not matter and declined to decide the issue.

The court refused to decide how to characterize the forum because the blocking was motivated by the **content** of the constituent’s expression. The First Amendment prohibits government censorship based on what is said rather than based on the time, place, or manner of expression regardless of the type of for public forum.

Even a personal Facebook page can become official. In the *Loudoun* case, the elected official’s personal page attached to her official persona when she promoted her page in a newsletter and invited comment. To avoid a similar issue, a local government in Maryland instituted a social media policy creating an official page purely for complaints, removing only spam and malware.

Although *Loudoun* is not a Fifth Circuit case, Texas might be months away from a similar ruling. In *Robinson v. Hunt County*, a resident was blocked by the Sheriff for commenting on the Sheriff’s Office Facebook page last year. After her case was dismissed by a district court in Dallas, this resident appealed the case to the 5th Circuit, which heard oral argument on December 6, 2018.

The district court in *Robinson* dismissed the complaint’s claims arising from alleged First Amendment violations because the plaintiff failed to eliminate the possibility that the sheriff had removed a post not because it criticized the sheriff’s office but instead because it was disrespectful to a deceased officer. Interestingly, the Facebook site stated that the site was not a public forum even though it invited public comments. The district court decision did not depend on the disclaimer but relied on precedents under the federal Civil Rights Act that government officials are immune from liability for violating a claimed federal right when the right has not been “clearly established.” The district judge was swayed by the absence of clear precedent on whether a Facebook page is public forum.

LESSONS LEARNED

- 1) If you want to avoid federal law restrictions, keep personal social media entirely separate from governmental business and avoid referring to personal sites in official printed or web publications, or even when speaking to the public at meetings, news conferences, or other events. Keeping personal and governmental platforms separate is important to limit First Amendment restrictions on personal social media sites and to avoid making personal social media sites subject to the Texas Public Information Act.
- 2) Do not use personal social media sites as platforms for publishing governmental information or announcements.
- 3) Do not use official titles or seals, logos, or mottos as part of the name or design of personal social media pages.
- 4) Do not give or share control of personal media sites with other governmental officers or employees.
- 5) If you establish a social media site for a government:
 - a. Consult with attorneys regarding the proper limits of what, if any, content can be banned and how to express the scope of permissible posts.
 - b. Clearly state any limits on the purpose of any public posts to the site, such as: “Constructive suggestions for how to keep parks clean.” It probably will be held acceptable to remove posts on other topics regardless of how the courts may end up characterizing First Amendment rights to post on governmental social media sites.
 - c. Do not block individuals or remove specific posts without consulting a lawyer.

This educational message was sent to clients, friends and colleagues of the Firm. If you do not wish to receive such email messages in the future, please reply to the sender, or e-mail your request to be removed from this mailing list to Info@TexasMunicipalLawyers.com. This document does not constitute legal advice.

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BOJORQUEZ
LAW FIRM, PC

Attachment D



Published on *City of Norman* (<http://www.normanok.gov>)

[Home](#) > Social Media Public Participation Disclaimer

Social Media Public Participation Disclaimer

The City of Norman's social media pages are limited public forums created for the purpose of providing updated information and sharing opinions regarding city-related events and programs. While the City welcomes and encourages dialogue with the public, any content maintained in a social media format that is related to City business, including a list of subscribers and posted communication, is a public record and is subject to the State of Oklahoma open record laws. Please be advised that if you post materials, you participate at your own risk, taking personal responsibility for your comments and any information provided.

Our posting guidelines are found below. The City reserves the right to remove comments and posts that do not follow these posting guidelines.

Posting Guidelines

The intended purpose of the site is to serve as a mechanism for communication between city departments and members of the public. All comments are reviewed after posting. Comments will not be edited by the City or its staff, the City reserves the right to restrict or remove any content that is deemed in violation of this policy or any applicable law. This list is not intended to be all-inclusive. Examples are:

1. Profane or obscene language;
2. Content that promotes, fosters, or perpetrates discrimination on the basis of race, creed, color, age, religion, gender, national origin, marital status, physical or mental disability, or sexual orientation;
3. Sexual content, sexual references or sexual innuendos, or links to any such material and content;
4. Solicitations, advertisements or endorsements of any financial, commercial or non-governmental agency or entity;
5. Content that directly promotes or advocates violence or the threat of violence;
6. Content or comments that compromise the safety or security of the public or public systems;
7. Conduct or encouragement of illegal activity or posting of material that violates any copyrights or trademarks of others; and,
8. Confidential or non-public information;

9. Content that contains personal attacks of any kind;
10. Content that contains personal information (whether your own or someone else's), including an image, home address, home or cell phone number, or personal e-mail address, in order to protect privacy.

Users who do not comply with these standards of conduct may be blocked. Blocked users may appeal in writing to the City Manager. Upon receipt of the appeal, the City Manager will then have up to ten (10) working days to issue a decision. The City Manager's decision is final. The decision to restrict or remove any content deemed in violation of this policy or any applicable law is not appealable.

The City disclaims all responsibility and liability for any materials that the City deems inappropriate for posting which cannot be removed in an expeditious or otherwise timely manner. A comment posted by a member of the public on an official social media page of the City is the opinion of the commentator or poster only, and publication of a comment does not imply endorsement of, or agreement by, the City, nor do such comments necessarily reflect the opinions or policies of the City.

Attachment E

CITY OF NORMAN Social Media Policy

311: Social Media. The City of Norman endorses the secure use of social media to enhance communication, collaboration, and information exchange; streamline processes; and foster productivity. This policy establishes the City's position on the function and management of social media. This policy is not meant to address one particular form of social media; rather social media in general, as advances in technology will occur and new tools will emerge.

Social media provides a new and potentially valuable means of assisting the City and its personnel in meeting community outreach. The City also recognizes the role that these tools play in the personal lives of some of the employees. The personal use of social media can have bearing on City employees in their official capacity. As such, this policy provides information of a precautionary nature as well as prohibitions on the use of social media by City employees.

311.1: On-The-Job Use. Where possible, each social media page shall include an introductory statement that clearly specifies the purpose and scope of the City's presence on the website. Where possible, the page(s) should link to the City's official website.

Procedures and Guidelines. All City social media sites or pages shall be approved by the City Manager or his/her designee in coordination with Information Technology to ensure consistency of City brand and messaging.

- (a) Where possible, social media pages shall clearly indicate they are maintained by the specific department and shall have department contact information prominently displayed.
- (b) Social media content shall adhere to applicable laws, regulations, and policies, including all information technology and records management policies (located in the IT Policy Library located at [\\con-isilon\city\Public IT Policy Library](#)).
- (c) Employees shall conduct themselves at all times as representatives of the City and accordingly, shall adhere to all City standards of conduct and observe conventionally accepted protocols and proper decorum.
- (d) Employees shall identify themselves as a member of the City.
- (e) Employees shall not make statements or comments, nor post, transmit, or otherwise disseminate confidential information, including photographs or videos, related to department activities, or work-related assignments without express permission from their Department Director.
- (f) Employees shall not conduct political activities or private business.
- (g) Use of personally owned devices to administer the City's social media activities or in the course of official duties is prohibited without express written permission.
- (h) Employees shall observe and abide by all copyright, trademark, and service mark restrictions in posting materials to electronic media.

311.2 Personal Use. Barring state law, union contracts, or departmental policies to the contrary, City employees shall abide by the following when using social media on their personal time.

- (a) Employees are free to express themselves as private citizens on social media sites to the degree that their speech does not impair working relationships of the City for which loyalty and confidentiality are important, impede the performance of duties, impair discipline and harmony among coworkers, or negatively affect the public perception of the City.
- (b) Employees should assume that their speech and related activity on publicly available social media sites could reflect upon their City employment, and may be viewed by anyone, including City officials.
- (c) Employees shall not post, transmit, or otherwise disseminate any information to which they have access as a result of their employment and that could reasonably be considered to represent the views or positions of the City without written permission from their supervisor.
- (d) For safety and security reasons, employees are cautioned not to post information pertaining to any other member of the City without their permission.
- (e) Although not an exclusive list, some examples of prohibited social media conduct include:
 - 1. Posts that include obscene or sexually explicit language, images, or acts and statements or other forms of speech that harass, ridicule, malign, disparage, or otherwise express bias against any race, any religion, or any protected class of individuals, or include threats of violence.
 - 2. Posts involving the employee or other City employees reflecting behavior on the part of the employee or other City employees that would reasonably be considered reckless or irresponsible.
- (f) City employees should expect that any information created, transmitted, downloaded, exchanged, or discussed in a public online forum may be viewed by anyone, including City officials.
- (g) Refrain from using social media while on working time or on City equipment unless it is work-related or as authorized by your supervisor. Use of social media which interferes with or detracts from job performance is prohibited. Do not use the City's email addresses to register on social networks, blogs or other online tools utilized for personal use.

Employees need to know and adhere to the City's Code of Conduct policy, Section 300 in the Personnel Manual, when using social media.

Policy Effective Date: December 12, 2016



Approved by:
Steve Lewis, City Manager