

Considerations for a Municipal Social Media Policy

Massachusetts municipalities are embracing social media, using the services to share information, facilitate community engagement and increase transparency. Unlike the average social media user, however, municipalities, as government entities, must make sure that their online conduct is consistent with a wider range of state and federal laws. These include the public records law and its records retention requirements, the open meeting law, the First Amendment, conflict of interest laws, and laws regarding confidentiality. A prudent municipality should have a social media policy that addresses these various legal requirements.

Basic Principles

All municipal social media accounts should state clearly and visibly that they are operated by the municipality. This can be accomplished with an appropriate username or handle and a link to an official municipal website. It is also advisable to have all municipal social media accounts “verified” by the social media platform, which will indicate to the public that the accounts are authentic.

The municipal social media policy should designate the employees who will have a role in approving, creating, maintaining and managing the municipal social media program. For example, a policy should require that the city or town manager/administrator, or his or her designee, grant approval before employees can create new social media accounts for the municipality. It should require that all login information and passwords be kept secure in a centralized location with the IT department. Employees should use

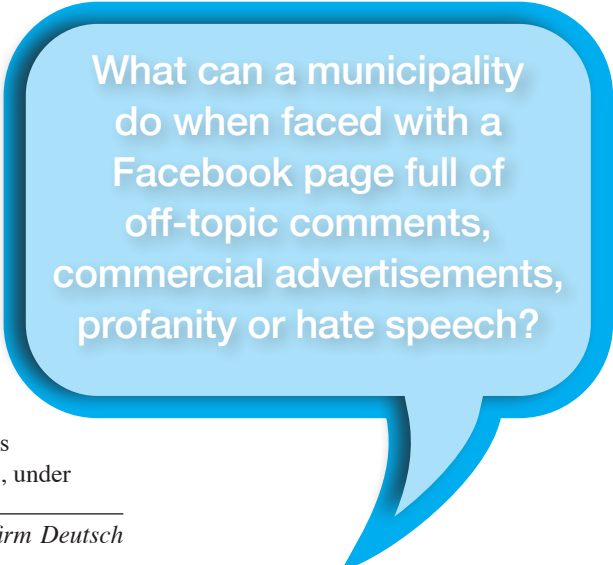
official, not personal, e-mail addresses to create social media accounts for the municipality. Doing so eliminates the risk to municipalities of losing access to their own social media accounts when the employees responsible for creating and managing the accounts separate from employment.

The employees who manage, update and monitor municipal social media accounts are the municipality’s online representatives. Anything they post, share, pin, tweet or say in a comment is likely to be considered an official municipal communication. Therefore, a policy should make clear that these employees may use the municipal social media accounts for official business *only* and that they should not, under

any circumstances, be using those accounts to express their personal views. They should also be trained and prepared to address negative feedback. These designated employees should know and comply with the rules of all the social media platforms being used by the municipality.

Public Records Implications

Once the basics are in place, a social media policy should address compliance with the public records law (M.G.L. Ch. 66). Any electronic communication created or received by a public employee in his or her capacity as such is subject to retention and possibly disclosure, in



What can a municipality do when faced with a Facebook page full of off-topic comments, commercial advertisements, profanity or hate speech?

Elizabeth Valerio and Caroline Thibeault are attorneys with the Boston firm Deutsch Williams Brooks DeRensis & Holland, P.C. (www.dwboston.com).



whole or in redacted part, under the law. This includes communications sent and received via social media. Therefore, municipalities must maintain organized, accessible records of their social media account activity. The problem is that social media accounts are hosted on servers entirely outside of a municipality's control. Although it may seem a safe bet that social media sites such as Facebook and Twitter will host user-generated content indefinitely, there is no guarantee that they will. The secretary of the Commonwealth has recommended that any public entities using social media should (1) review all social media service providers' terms of service for its records retention practices, and (2) develop a procedure for retaining copies of all social media content, such as by taking periodic

screenshots. [The secretary's *Electronic Records Management Guidelines* is available at www.sec.state.ma.us/arc/arcpdf/Electronic_Records_Guidelines.pdf.] On that note, social media platforms such as Snapchat, which is designed to delete the user's content after a short period of time, are not recommended for use by municipalities, as the platform makes it difficult, if not impossible, to comply with records retention laws.

First Amendment

The second, more complicated legal issue that municipalities encounter when using social media is posed by the First Amendment. One of social media's defining characteristics is that it is interactive. Unlike ordinary webpages, which involve one-way communication,

social media sites invite the public to comment, share, and engage with the account's host. In that sense, these accounts could be considered akin to public spaces such as streets, sidewalks and parks, where free speech has its highest level of protection. This means that municipalities must be prepared to receive criticism and negative feedback. They must also be prepared for completely off-topic, unwelcome and inappropriate content. That raises a question: What can a municipality do when faced with a Facebook page full of off-topic comments, commercial advertisements, profanity or hate speech?

Without explicit limitations on use, social media pages could potentially constitute "designated" or "open" public forums. The U.S. Supreme Court

CONSIDERATIONS FOR A MUNICIPAL SOCIAL MEDIA POLICY

describes this type of forum as a place that the state has designated “for use by the public as a place for expressive activity” [*Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983)]. Government actors have virtually no editorial control over open forums. This means that municipalities choosing to operate their social media accounts as open forums will be powerless to remove unwanted or inappropriate content.

Alternatively, a policy could require that all social media accounts be explicitly designated as *limited* public forums. In limited public forums, municipalities may impose reasonable, viewpoint-neutral limits on the topics to be discussed in the forum. To create a limited public forum, a social media account should clearly and visibly state that it is not an open forum and that it is limited to specific subject matter. For example, a municipal parks department page may be limited to comments about parks and park operations. A policy should include a “Terms of Use” section that reserves the municipality’s right to remove certain comments, such as comments that are off-topic, harassing or discriminatory; or that include obscenity, threats or advertisements; or that encourage illegal activity. Each social media account should link to the Terms of Use and advise visitors that failure to abide by the Terms of Use may result in removal of comments, posts, etc.

Municipalities choosing to create limited public forums must ensure that their policy is regularly and uniformly enforced. It is, therefore, critical that designated employees be trained to monitor and moderate social media accounts in a way that does not run afoul of the First Amendment. Designated employees could violate the First Amendment if, for example, they only remove off-topic posts that are critical, or if they remove posts based on content that does not fit within the narrow grounds for removal stated in the municipality’s Terms of Use.

In general, the policy should encourage designated employees to make edits, updates and clarifications to posted material in lieu of removal. This rule applies to content posted both on behalf

of the municipality and by visitors. When visitors post negative feedback on a municipally operated account, authorized or designated employees can avoid First Amendment issues altogether by responding respectfully and, if appropriate, by providing relevant information instead of deleting or hiding the content. In addition, when such employees remove or edit content they have posted on the municipal account, the public records law is implicated. Therefore, making corrective posts and clearly identifying edits is a preferable way to preserve the accuracy of municipal records.


Open Meeting Law

In addition to the general public, visitors to municipal social media accounts may include elected officials, appointed officials and volunteer members of boards. Therefore, a policy should address the Massachusetts open meeting law (M.G.L. Ch. 30A, Sections 18-25). The Attorney General’s Office has warned that communications on social media may constitute improper deliberations if viewed by a quorum of other members of the same public body [Open Meeting Law Determination 2013-27, available at www.oml.ago.state.ma.us]. Public boards and committees should remember that posting on social media does not satisfy the “notice” requirements in the open meeting law. [See M.G.L. Ch. 30A, Section 20(c).]

Personal Use

A municipal social media policy should address its employees’ personal use of social media. Avoid overly broad policies, which courts look upon with disfavor, and simply encourage smart social media use. Remind employees that if a communication could not be made in person, by letter or over the phone, it should not be made using social media.

The employer’s policies as well as laws regarding confidentiality and conflict of interest apply regardless of how the communication is made. For example, the policy should prohibit employees from posting confidential information about other employees. It should also prohibit employees from using personal



A good social media policy provides guidance to ensure compliance with First Amendment free speech rights, the public records and records retention laws, and the open meeting law.

accounts to post or comment in a way that suggests they are speaking on behalf of the municipality.

Finally, employees should be cautioned that any online communication, no matter the intended audience, has the potential to become public when shared on social media. Employees should be reminded to check their privacy settings, but never place complete reliance on them.

A good social media policy provides guidance to ensure compliance with First Amendment free speech rights, the public records and records retention laws, and the open meeting law. It should also set ground rules for establishing and managing new social media accounts. Once in place, a social media policy ultimately enables a municipality to get the most benefit out of its social media presence and to engage with the community in a way that furthers the municipality’s mission. 🌟