



Best Practices for Using Social Media in Municipal Government

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DISCLAIMER



*This presentation is for informational and training purposes only
and should not be considered legal advice.*

Why should local government use social media?

- Increasing awareness of community programs, services, resources, issues, and events
- Highlighting the good work your municipality does
- Connecting with the community and building trust
- Receiving feedback
- Increasing transparency and accessibility

What is a Social Media Strategy?

A social media strategy is the foundation for your social media activities, because it aligns your day-to-day social media networking tasks with objectives that support your overall organizational goals.

Includes:

- Audience identification
- Content creation & ownership
- Objectives & key messages
- Platforms

Strategy should be in line with any laws & your approved social media policies, more on that soon.

Social Media Usage

There were 4.65 billion social media users on the planet in 2022. That's 58.7% of the global population, many of whom are using social media as a primary source of information

In 2021 in the US, 74% of online adults were using social networking sites

Many of these users report using daily, especially for Facebook, Snapchat & Instagram

What are the right channels for your organization?

Your organization's objectives & audience will help you determine this.

Consider: best practices, research/survey of community, trends, and usage data.

This will vary from community to community and success can depend highly on internal capacity to manage the channels as well. Be sure to measure success over time!

A quick look at most popular platforms...

1. **Facebook** 2.9 billion: Many users check in daily, or more often.
2. **YouTube** 2.2 billion: Potential for reach on YouTube is unrivaled, with 81% of U.S. adults using the platform.
3. **WhatsApp** 2 billion: Consider that SMS has a 98% open rate compared to 20% for email. Most popular social messaging app. Can be useful but tricky in government w/ retention & transparency issues.
4. **Instagram** 2 billion: If your target demographic is under 35 then Instagram can be gold.
5. **TikTok** 1 billion: In the U.S. 25% of the audience is a teenager or younger.
6. **Snapchat** 538 million: Great if your target audience is YOUNG, the most active users avg. 13-years-old.
7. **Pinterest** 444 million: I've seen some limited use in local government, incl: tourism, libraries, parks.
8. **Reddit** 430 million: One of the top 20 most-visited sites in the world, value depends on city/town.
9. **LinkedIn** 250 million: Very focused social media platform but growing in use by local governments.
10. **Twitter** 217 million: Many are watching and waiting on this one recently. Easy, non-stop conversation. Preferred platform of journalists and local media in the US.

*These numbers are monthly active users, data from 2022

Before we go on, tell us about your community...

Short poll!

Head on over to www.menti.com and use the code **2680 7215** or scan the QR code below from your smartphone.



What are Social Media Policies?

A social media policy isn't just a set of rules. It guides, advises and inspires in best and worst case scenarios. Having a good social media policy in place is critical to effective and safe online communication.

Without proper policies in place (both internal & external) you are exposing yourself to legal risk, potential erosion of public trust & other issues.

What should a social media policy cover?

- Your **Social Media Policy** should govern the way your municipality uses and maintains your social media accounts (internal) and it should include terms of use or limitations of use for visitors (external)
- Identify who is authorized to officially represent organization
- Standards/expectations of employees, board members, elected officials interacting on municipality's behalf or on their personal accounts
- Consequences or plan for addressing for policy limitations/violations
- **We'll discuss important legal requirements in greater depth coming up**

Internal Social Media Policies

Purpose: Provides guidance for employees posting to your sites, and includes a protocol for launching new social media pages. This should also address personal use of social media by staff, board members, and/or elected officials.

Failing to develop an internal policy opens the door to potential PR and legal headaches, including neglected pages that reflect poorly on your organization, or inappropriate posts and comments by employees.

More on the legal implications to come.

External Social Media Policies

Purpose: Establishes acceptable use guidelines for the public, and should include a disclosure regarding the preservation of content for **public records law compliance**. Clearly outlining these parameters, and having a means to enforce them, enables your public entity to maintain civil discourse on your social media sites. The good news is that you don't need to start from scratch or create a ten page policy that covers every conceivable scenario. **Most internal policies are only a page or two, and external policies are often even shorter than that.**

MMA has examples on their website under resources.

Ask your legal advisors for examples or to review your drafted policies!

High level tips for Social Media Policies

- If you have a policy: enforce it consistently. If you don't have one—get one!
- Post your policy on your website and make it available on your social accounts
 - Also make sure the Terms of Use of the platform you're on is also linked from your profile!
- Have an approval process for who can have access to social media accounts
- Identify yourself as an official source
 - Require that all accounts state that they are municipally operated and link to your official page on your City/Town website
 - Use a profile picture that identifies you as an official source—(hint: City/Town seal!)
 - Work to get verified
- Keep a complete listing of the login information
- Make sure at least one of your key players (Communications staff, IT Director, Town Manager, etc.) has admin access to the accounts in the event your social media manager leaves

Public Records Law

- Any electronic communication created or received by a public employee/official in his or her capacity as such is subject to retention and possibly disclosure, in whole or in redacted part, under the public records law.

See M.G.L. c. 4 §7(26); M.G.L. c. 66 §10

Public Records Law

If you inadvertently post content that is inaccurate or if you receive negative feedback on a post:

Don't delete it!

- Instead, your policy should encourage **edits, updates, and clarifications** to the posted material in lieu of removal.
- Make it clear you have modified/corrected an earlier post (unless correcting spelling/grammar).
- Encourage employees to respond to negative feedback respectfully and, if possible, by providing further information.

Open Meeting Law

- Postings on social media do not constitute “notice” under the Open Meeting Law (See OML 2016-59)
- Meeting notices still must be posted in accordance with the Open Meeting Law
- Communications among public body members, even on social media, are subject to the Open Meeting Law, M.G.L. c. 30A, §§18-25
- Postings and comments on social media may be “deliberations” under the law (See OML 2013-27; OML 2022-27; 2018-145)

Public Records Implications

Archiving social posts:

The best way to retain records is with the help of social media archiving tools, since they retain the metadata that will stand up in court.

Screenshots aren't as great of a strategy, but it is better than nothing. Periodic downloads of data, dependent on platform.

It's an insurance policy that you hopefully will infrequently need to use.

Conflicts of Interest

- Prohibit the use of the municipality's social media accounts that would create a conflict of interest for the public body or any of its members under M.G.L. c. 268A
 - No personal use during work time
- Be careful not to endorse products or vendors when linking and/or liking other accounts

Confidential Information

- Never post legally protected information
- Post a reminder on all social media accounts that anything posted on the page potentially becomes public record

WHERE ARE THE LINES BETWEEN LEGITIMATE DISCOURSE AND ACTIONABLE CONDUCT?



Is everything protected free speech?



As an elected official, should you be subject to more abusive behavior?



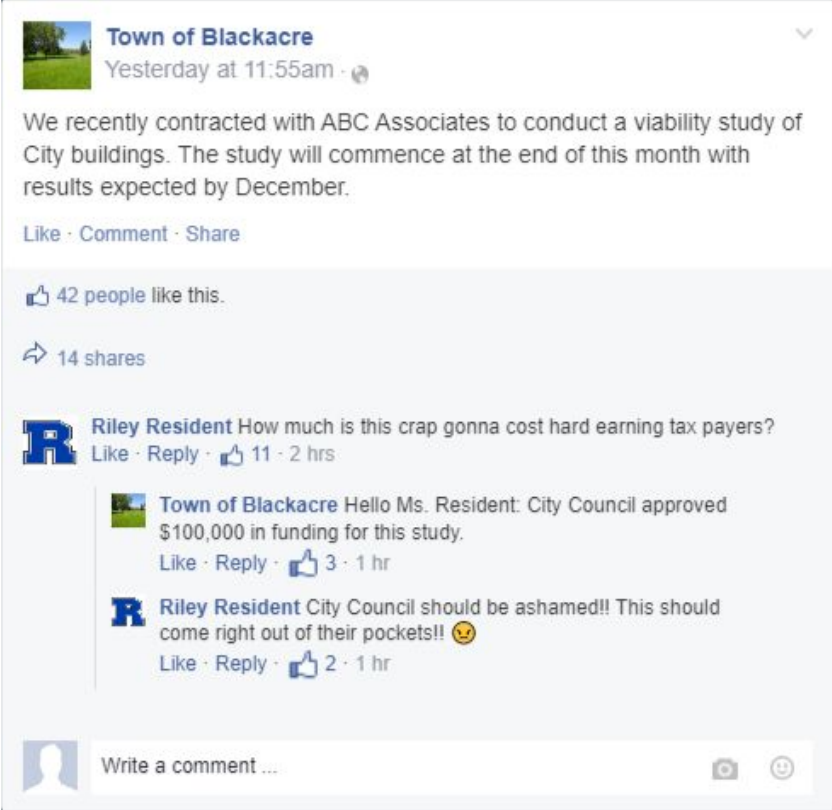
What about employees? Do they have to accept online abuse as part of the job?



Does it make a difference what position they hold?

Posting and Hosting

- If the individual posts directly on a municipality's social media account, then the municipality may be able to formulate a response.
- When individuals post on social media websites and applications not operated or hosted by a municipality, it can be difficult to respond to the post and to have it removed.
- If your goal is to share information via social media, do you need to allow commentary?



The screenshot shows a Facebook post from the 'Town of Blackacre' page. The post is dated 'Yesterday at 11:55am' and contains the text: 'We recently contracted with ABC Associates to conduct a viability study of City buildings. The study will commence at the end of this month with results expected by December.' Below the text are interaction options: 'Like · Comment · Share'. The post has received 42 likes and 14 shares. A comment from 'Riley Resident' asks, 'How much is this crap gonna cost hard earning tax payers?'. The town's official response is: 'Hello Ms. Resident: City Council approved \$100,000 in funding for this study.' Another comment from 'Riley Resident' says, 'City Council should be ashamed!! This should come right out of their pockets!!' with a sad face emoji.

Town of Blackacre
Yesterday at 11:55am · 🌐

We recently contracted with ABC Associates to conduct a viability study of City buildings. The study will commence at the end of this month with results expected by December.

Like · Comment · Share

👍 42 people like this.

↪️ 14 shares

Riley Resident How much is this crap gonna cost hard earning tax payers?
Like · Reply · 👍 11 · 2 hrs

Town of Blackacre Hello Ms. Resident: City Council approved \$100,000 in funding for this study.
Like · Reply · 👍 3 · 1 hr

Riley Resident City Council should be ashamed!! This should come right out of their pockets!! 😞
Like · Reply · 👍 2 · 1 hr

Write a comment ... 📷 😊

Posting and Hosting

- If the municipality's page has clear terms of use subjecting certain content to removal and the individual's post violates those terms, it may be removed.
 - For public records retention purposes, a screenshot of the post must be maintained before removing it.
- Social media websites and applications may also remove posts that are inconsistent with their terms of use. In this case, municipalities should attempt to obtain a screenshot of the post in the event it is later removed by the hosting website or application.

First Amendment

Social media websites and applications provide the public with the opportunity to make their own posts or comment on others – this creates a First Amendment issue

First Amendment

- Draft “Terms of Use” and a link to them on all your social media accounts
- Clearly state that the page is limited to specific subject matter (e.g., Fire Department, Council on Aging, Public Schools, Recreation Department, etc.)
- Designate someone to monitor regularly for posts that violate the “terms of use” of your social media policy
- **REMEMBER:** You must enforce your policy consistently and uniformly and without regard to viewpoint!

Terms of Use

- Clearly and explicitly reserve the right to remove comments:
 - That are off-topic;
 - That include obscenity, fighting words, true threats, commercial promotions or advertisements;
 - That are harassing or discriminatory on the basis of race, creed, color, national origin, religion, age, gender, or sexual orientation or any other protected class; or
 - That encourage illegal activity.

First Amendment

If your municipality has social media accounts, consult Town Manager/Dept. Head/Communications staff before deleting any user's post or comment from that account. May need to consult legal counsel as well.

You could violate the First Amendment if...

- You only remove off-topic posts when they are negative; or
- You remove posts based on their content, instead of the explicit (narrow) grounds for removal stated in your policy;
- If you create a limited public forum, you cannot remove posts because of viewpoint.

Caution: The First Amendment “Public Forum”

- Without explicit limitations on use, social media accounts that permit public comment could constitute open public forums
- To avoid creating an open forum: disable commenting so your communication to the public is one-way
 - Restrict who can update and post on accounts
 - Restrict communications by authorized users to official communications and don't allow the expression of personal opinions/viewpoints, regardless of content

Caution: The First Amendment “Public Forum” continued

The intent of social media being a two-way dialogue. Residents expect to be able to share their thoughts.

...but that may not be practical for every municipality due to staffing or expertise.

Sample Policy and Violation

POLICY

“If you are creating content you know will be posted publicly on the Town’s Facebook page, you agree not to post anything illegal, obscene, threatening, fraudulent, (you have to be who you say you are). If you don’t follow these rules, we can remove the publicly posted content. Also, remember than any information submitted to the Town is subject to Massachusetts Public Records Law (learn more in our Privacy Policy).”

VIOLATION



The screenshot shows a Facebook post from a user named 'Paula Pet' who is associated with 'City of Acme'. The post is dated 'Yesterday at 2:55am' and includes a small profile picture of a dog. The text of the post reads: 'i'm f king done with your animal control officer harassing me about needing a kennel license for my dogs i don't give a s !! if i hear from that f king officer one more time i'll be sending the dogs after him and that's a promise'. Below the text are interaction options: 'Like · Comment · Share', '18 people like this.', and '3 shares'. At the bottom, there is a comment input field with a placeholder 'Write a comment ...' and icons for adding photos and emojis.

CRITICISM COMES WITH THE TERRITORY – WHY IS THIS DIFFERENT?



The material never goes away



Easy to start rumors and promulgate false accusations



False accusations easily resurrected by re-tweeting or by adding new comments to Facebook content



The employee can see “likes,” comments, re-tweets, etc.



Is it realistic to ask the employee to ignore it?

Harassment

M.G.L. c. 265 § 43A makes it a crime to willfully and maliciously engage in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress.

Under M.G.L. c. 258E, an individual may obtain a restraining order against someone that engages in three (3) or more acts of willful and malicious conduct aimed at a specific person committed with the intent to cause fear, intimidation, abuse or damage to property and that does in fact cause fear, intimidation, abuse or damage to property.

Threats

Under M.G.L. c. 275, §§ 2 – 4, it is illegal to threaten to commit a crime.

HOW DO YOU KNOW IF YOU MUST ACT?



Has the employee complained or asked you to intervene?



Has a threat been posted?



Has a town official participated in the objectionable activity? Why is that relevant?

STRATEGIES TO RESPOND AND SUPPORT EMPLOYEES AND OFFICIALS

Preserve the objectionable content

- Screen captures
- Photographs

Contact the social media host

- Facebook community standards
- Reporting abusive or harmful conduct to Twitter
- They will remove content
- Suspend user's rights

STRATEGIES (CONT.)

- **Public discussion of the problem**
 - Speaking out against objectionable behavior
 - Legitimizing vs. marginalizing bad behavior
 - Should you or your fellow officials participate on a Facebook forum that permits objectionable content?
 - Asking fellow officials to boycott if the hosts don't police content

CROSSING THE LINE – DISTINGUISHING THREATS FROM CRITICISM



Does the employee or official have a reasonable fear of death or serious bodily injury?



Does the employee have a reasonable basis to fear this person?



Are others in fear of this person?

ASSESSING THREATS (CONT.)



Person's history – propensity toward violence



Based on race, ethnicity, gender, orientation, etc.



History of mental illness/instability



Escalating rhetoric



Access to weapons



Engaging law enforcement professional to review

LAW ENFORCEMENT'S ROLE



If you're not sure whether there was a crime, ask



Providing legal representation/advocacy for your employees



Involving the District Attorney's office

They may defer immediate action, but they are on notice and may act on subsequent allegations

Social Media & Discipline

Can public employers discipline their employees for off-duty posts, comments, blogs, etc. on their personal social media accounts?

A tenured first grade teacher was dismissed for posting the following on her Facebook page:

“I’m not a teacher – I’m a warden for future criminals!”

“They had a scared straight program in school – why couldn’t I bring 1st graders?”

Her speech was not protected.

Public Employee Speech

- The courts use a multi-part test to determine if a public employee's speech is protected by the 1st Amendment:

Ask:

- Is the speech on a matter of public concern?
- Was the speech made as a private citizen?

If the answer to either of these questions is **no**, the 1st Amendment is **not** implicated

“Matter of Public Concern”

- What is a matter of public concern?
 - Courts consider the **content, form, and context** of the speech
 - How important is the subject matter to the public?
 - Is the speech directed at a public or a private audience?
 - Is the speech made in a format or place which is traditionally used for public debate?
 - Is the speech limited to the employee’s own work-related issue or does it relate to a subject of wider concern/call for a broader public debate? (Note: it may fall within both categories)

“Pursuant to Official Job Duties”

- Private citizen speech is protected; speech pursuant to official job duties is not.
- Could someone perceive the speech as bearing the “imprimatur of the state”?
 - This is a practical question
 - Don’t limit yourself to job descriptions or lists of duties

Public Employees: Held to a Higher Standard

- Some public employee speech is not protected by the First Amendment **even when** the speech is on a matter of public concern and made as a private citizen.
- In order for a public employer to impose discipline in such circumstances, **the interference with the employer's operations should be clear and substantial.**
- There may be **overriding government justifications** in regulating public employee speech that outweigh an employee's free speech rights:
 - **Maintaining a workplace free of substantial disruptions**
 - **Maintaining public trust in a governmental office**
 - **Maintaining confidentiality of non-public records**

Protected Concerted Activity Considerations

- Employees who engage in internet speech regarding the terms and conditions of employment may be participating in protected concerted activity (M.G.L. c. 150E)
- Among the factors to consider:
 - Was the employee speaking with or on the authority of other employees?
 - Was the employee inviting other employees to discuss issues or was the speech an individual “gripe”?

Employee Professional Accounts

- Some individuals, Mayors, Town Managers or Town Administrators may opt to maintain two accounts – one personal and one professional
- An employee professional account and an official municipal account are both subject to the same scrutiny as you are posting on social media and expressing the viewpoint of the municipality

Social Media & Discipline - Recap

Before taking disciplinary action against an employee for speech on social media...

- Consult legal counsel
- Consider First Amendment rights
- Check whether your social media policy provides guidance
- Review other relevant policies (for example: policies prohibiting harassment and discrimination, acceptable use policy, etc.)

Key Takeaways

- Have a solid strategy from day 1. Determine fit and purpose of specific platforms in your community, this can change over time so pay attention to where your community is gathering digitally.
- Do an audit on your social media accounts:
 - What accounts do you have?
 - Who has access/who should have access?
- If you don't have a policy, make one. If they're missing things we've covered today, revisit. When in doubt, **pause** and ask your approved social media manager or legal counsel.

Questions?

Please use the Q & A function in the Zoom webinar

Resources

MMA examples of social media policies & more at <https://www.mma.org/resources/>

Social Media Strategies <https://www.ca-ilg.org/social-media-strategies>

Social Media Fact Sheet <https://pewresearch-org-preprod.go-vip.co/internet/fact-sheet/social-media/>

Social Media for Public Officials 101 <https://knightcolumbia.org/blog/social-media-for-public-officials-101>