Social Media for Elected Officials: Best Practices and Legal Issues

Presented by the League of Minnesota Cities

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Todays webinar presenters

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Pam assists member cities to address conflict, increase efficiencies, understand best practices, and reach sustainable agreements together or with other entities. Her services include facilitation, process design, training, and mediation. Pam also is a frequent presenter on topics such as boards or councils working collaboratively, best practices for bridging divides, and better meeting management skills.
Course objectives

By the end of this webinar participants will:

• Understand the benefits and drawbacks of most widely-used social media platforms.

• Learn best practices on developing and managing your social media presence.

• Review potential legal issues with social media use.
It’s time for a polling question!
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What do we mean by social media?
Uses of Social Media

• Push information out to public
  • Events, government, public works, construction
• Encourages resident involvement
  • “Two-way” interaction
  • Input from residents
• Public safety agencies solving crimes
• Show off your services, programs and the beautiful parts of your community
• Ask others to show their love for where they live, work and play
It’s time for a polling question!
And...you will reach residents

- For example, Facebook is the #3 website in world with 68% of Americans

- Average time spent by user on Facebook is 58 minutes per day

- Instagram offers an option to automatically post your Instagram post to a linked Facebook account

- Whether Facebook, Instagram or other social media, 34% of Americans have contacted a government official or spoken out in a public forum through online methods
## Impact of Social Media

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<th>Intent</th>
<th>Result</th>
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<td>• Inform followers (residents)</td>
<td>• Public perceives elected officials as speaking for some, most, or all other electeds</td>
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<td>• Generate honest questions and dialogue</td>
<td>• Every post, like, or tweet makes a statement</td>
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<td>• Raise visibility/image of the city</td>
<td>• Every post, like or tweet becomes memorialized, and you can’t get rid of what you said or did</td>
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<td>• Represent yourself as a leader supportive of your community</td>
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Issue: Blurred Line

Is it your personal page?

Do you have an elected official page?

Would the court see it as both?
Creating a page in Facebook
After set up, fill out application to verify your page (do this for Twitter as well)
Best Practices When Posting

• Format posts to best fit each platform’s individual standards
• Keep it short
• Use hashtags
• Keep promoting the existence of your account
• Use images, infographics & videos
• Utilize a service that links multiple accounts on one dashboard
It’s time for a polling question!
Possible Legal Issues

• First Amendment concerns, even if as elected official
• Copyright
• Open Meeting Law
• Bad Behavior
• Campaign Concerns
• Data Retention?
First Amendment
The ACLU of Maryland and ACLU of Maine are suing governors in each state over the practice.

The ACLU of Pennsylvania has pushed a local council member to stop deleting comments from critics.

In Arizona, U.S. Rep. Paul Gosar unblocked a woman on Facebook who filed a lawsuit claiming he violated her free speech rights. She mounted a lengthy protest against him that involved depositing real blocks at his office.
Tips on Setting up Page

Possible Language:

The purpose of this site is to present matters of public interest in (CITY). Please note this is a moderated online discussion site and not a public forum. Once posted, (elected official) reserves the right to delete submissions that contain: (i) vulgar language; (ii) sexual content/pornographic content; (iii) direct threats to persons or property; (iv) trademark or copyright violations (v) personal information posted without someone’s consent; (vi) information made private or confidential by statute (vii) commercial posts/hyperlinks or spam. It is recommend you not share any of your medical information on this site. Please note that the comments expressed on this site do not reflect the opinions and position of the (CITY) or its employees.
How to Respond to Posts

When a comment is negative:
• Be clear and factual
• Address the problem and the city’s response to it
• Do not engage in a back-and-forth debate
• Refer to external data sources in your comments
• Avoid knee jerk posting

When a comment is positive:
• Thank them and be personable
• Link to other positive and relevant stories
Copyright

• Images, text, video, audio, etc. used on social media sites must comply with U.S. Copyright Law

• Copyright protects **original works** of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture

• Something may be copyrighted even if it doesn’t say “copyrighted”

• No sovereign immunity for local governments
In their complaint, the photographers, Wendy Shattil and Robert Rozinski, learned of the alleged copyright infringement while watching news coverage of a Trump campaign rally in February—a supporter was holding up “a printed sign promoting Mr. Trump that appeared to incorporate the Photograph.”

Subsequently, they discovered not only that the Trump campaign was selling merchandise that allegedly incorporated the photograph but also that the campaign encouraged supporters to reuse the image—without the Denver-based photographers’ permission.
Social Media and Open Meetings

• Does Open Meeting Law apply in online/social media settings?

• Open Meeting Law is: A quorum or more of decision makers receiving or discussing official city business must be held in the open and the public must be notified about them ahead of time.

• State Statute versus Data Practices Opinion.
Bad Behavior

Legal issues
• Defamation/libel

Court of public opinion
• Deliberate posting (or liking or other non-written emoji or picture) of off-color, inappropriate comments
• Using personal account to launch personal or political attacks against colleagues
• Creating inadvertent public perception of government interest
• Demeaning others
Kshama Sawant @cmkshama · Apr 18, 2018
This is terrible. @womensmarch organizers have helped lead historic protests since Trump's election but this tweet shows how, without a political compass, even well-meaning progressives can end up giving cover to ruling class & ultimately undermining struggles against oppression.

Women's March @womensmarch

Rest in peace and power, Barbara Bush.
Senator Ted Cruz (R) @SenTedCruz

Did a little shopping for the office with @SenMikeLee in Houston today. http://t.co/t9IsNINO5G

Deleted after 1 week at 8:02 PM on 06 May 14, via Twitter for iPad.

Screenshots of links in this tweet
Social Media Pages of Elected Officials and Public Records

• Some/all social media posting may be public records if an elected official is discussing any kind of government business no matter the format it is a public record.

• Collateral effect is that a court may order discovery of personal email, texts or social media.

• Local governments must know about, have access to, and actually search all elected official social media if they get a request and responsive posts might be in social media.
It’s time for a polling question!
Elected Official Concern: Political Activity

Thoughts on below? Problematic?

• Posting campaign events on government-Facebook page
• Tweeting campaign statements and events from the “elected official” official (not personal) twitter account
• Using a government-issued cell phone to tweet campaign-related messages from personal twitter account
Denver City Council president faces campaign complaint over city promotion of birthday fundraiser

Filing alleges improper use of social media and staff time; Albus Brooks disputes some claims

At issue is a birthday event set for March 10 that one of Brooks’ council aides posted on Facebook on a recent Friday during work hours, titled “Councilman Albus Brooks 39th Birthday Bash & Campaign Event.” Brooks, though, says the aide clocked out and was using personal time off to work for his 2019 re-election campaign, which has reported paying office staffers for tasks in past disclosures.

But the complaint, submitted to the Colorado Secretary of State’s Office by a Denver group called Strengthening Democracy Colorado, also alleges that it was improper to share the campaign event on his official Facebook and Twitter accounts. Those were embedded in feeds on his council office’s website. It also takes issue with the city of Denver’s official Twitter account retweeting a tweet about the event, commenting: “Count us in!”

Colorado’s Fair Campaign Practices Act bars state and local governments from making contributions to a campaign, including providing promotion or anything of value.
Key Messages

1. Don’t post something for public consumption that you would not say in person.

2. Stay away from discussions of items that will be or could be on your governing body’s agenda – the meetings are the better place for those discussions.

3. Stick to public service announcements, posts about things you did, upcoming events, re-posts of City newsletters, links to articles that tout the city etc...

4. Be particularly careful to stay away from commenting on a pending quasi-judicial matter.

5. Keep disagreements with colleagues civil, and consider not engaging with them on issues on social media.
Key Messages

6. Don’t engage back-and forth. Offer to meet off line at city hall.

7. Practice active listening online.

8. Do not block people.

9. Do not delete posts or tweets unless have consulted with city attorney first.

10. Be Mindful of Open Meeting Law – avoid posting on same post as a majority or more of other council members.

11. Watch humor, not everyone thinks the same things are funny.
Questions
Thank you for joining us today.

For follow up questions you can connect with Pamela Whitmore at: 651-291-1224 or pwhitmore@lmc.org

View the recording of this webinar here: www.lmc.org/socialmediawebinar2020

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