IMLA MODEL SOCIAL MEDIA POLICY June 24, 2019 (annotated through September 11, 2019)

Using this Policy.

A. This Policy is intended to provide a guide for a local government in establishing a social media policy governing the use of social media by their officers, employees and agents. It is not intended to be adopted in whole or in part, by any governmental entity, without specific attention for compliance with applicable federal, state and local laws, as may be adopted from time to time. This policy should be used only after consultation with counsel for the local government intending to adopt it.

B. Because this Policy is a legal document and creates certain rights and responsibilities, local governments are cautioned to seek legal counsel to ensure the Policy does not conflict with federal, state, or local law, court decisions or other requirements in this rapidly evolving area of the law.

C. In some sections IMLA has offered suggested options for large organizations and small organizations to choose from. This does not mean that other options are not available or that there are not other options to consider in those paragraphs where IMLA has not suggested an option.

D. Users should understand that policies regulating the use of social media can involve some of the most sensitive legal issues giving rise to litigation. These include violating the First Amendment rights of individuals, breaching privacy, violating open meetings or public records laws. As noted by at least one court, selecting a provider can itself act to violate First Amendment rights if the provider's policies effectively limit rights protected by the Constitution.

E. Users should be cautious in setting up or subscribing to social media platforms. This Model suggests that Users not establish open forums and instead establish either non-public forums or limited public forums. A limited public forum "exists where a government has 'reserv[ed a forum] for certain groups or for the discussion of certain topics.' *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.,* 135 S. Ct. 2239 (2015) at 2250 (quoting *Rosenberger v. Rector Visitors of Univ. of Va.*, 515 U.S. 819, 829, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995)). In contrast, a non-public forum is created "[w]here the government is acting as a proprietor, managing its internal operations.'" *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.,* 135 S. Ct. 2239 (2015) at 2251 (quoting *Int'l Soc'y for Krishna Consciousness v. Lee,* 505 U.S. 672, 678-79, 112 S. Ct. 2701, 120 L. Ed. 2d 541 (1992). Creating either type of forum requires careful attention to detail. For those in the 9th Circuit, that court distinguishes between limited public forums and designated public forums adding further confusion for those in that circuit. See: *Young America's Found. v. Napolitano*, No. 17-cv-02255-MMC, 2018 U.S. Dist. LEXIS 70108 (N.D. Cal. Apr. 25, 2018).F. This Policy refers often interchangeably to "open" and "traditional" public forums. The use of either refers to what the Supreme Court has described as a traditional public forum.

G.. IMLA's Model Policies are not a substitute for getting legal counsel and should be used only after having consulted counsel.

H. The use and application of this Model Policy by any particular governmental entity should conform to applicable federal laws relating to access under the Americans with Disabilities Act,

protections for publishers and speakers of interactive service under the Digital Millennium Copyright Act and the Communications Decency Act, as well as state and local laws. Users are advised to seek competent legal counsel to ensure compliance with these and other laws.

Note: Two cases that address the ADA and access to the Internet but not Social Media are *Price v. Ocala* Case No: 5:19-cv-39-Oc-30PRL (USDC MDFL 2019)(lack of standing as there is no threat of immediate future injury) and *Price v. Longboat Key,* Case No. 8:19-cv-00591-T-02AAS (USDC MDFL 2019(lack of standing as there is no injury-in-fact, and because of Defendant's accommodation, providing information on a flash drive, Plaintiff failed to state a claim).

I. IMLA offers "Comment" throughout the Model Policy to assist a local government in understanding particular provisions. The "Comment" is not intended to but may be made a part of an adopted policy. The "Comment" is current as of the completion of this Model Policy and IMLA undertakes no duty or obligation to update the Model Policy or "Comment" but will make a voluntary effort to keep the Model Policy up to date in a reasonable time frame. This does not obviate the need for a local government to update and revise their policies to conform to the current laws of its respective jurisdiction.

J. Different states approach open records laws using different terminology. In this Policy where terms such as "open records," "public records," "public information," or "FOIA" (Freedom of Information Act) are used, the usage that prevails in the adopting jurisdiction should be incorporated in the Policy to clarify the intent. Similarly, where the term "Open Meetings" is used, the local usage prevailing in the adopting jurisdiction (e.g., "Right to Know Law", "Sunshine Act", "Public Meetings Act", etc.) should be incorporated into the Policy for clarity.

IMLA gratefully acknowledges the Committee that worked on drafting this Policy and the helpful suggestions of Julie A. Tappendorf, Partner, Ancel Glink, Chicago.

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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 using 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 between local government and the public.
B. Social networking in government serves two primary functions: to communicate and deliver information directly to residents to inform the public about government matters, and when appropriate in a designated or limited public forum (Option: or open public forum Note: But see Comment to Sec. 6.3.2 below where we recommend against creating an open forum) to facilitate resident 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 cell phone applications, blogs, photo and video sharing sites, micro-blogging, social networking sites and wikis. This policy is not intended to address any one particular form of social media (i.e. Facebook, Instagram, Snapchat, Tumblr, Twitter, Flickr, Next-door, YouTube and similar platforms); rather social media in general, as advances in technology will occur and new tools for sharing information will emerge. While the City/County's website ([insert here the City/County website address]) is the City/County/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 public.
D. Other laws, ordinances and policies may also apply to the use of social media and this policy should not be interpreted to conflict with any of those laws, ordinances and policies, including requirements under the Americans with Disabilities Act.

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, shared, distributed, or transmitted via social media.

COMMENT: This definition encompasses all "Content" from whatever source. However, the meaning of Content in any particular Section is dependent upon the context. For example, the policy treats "Content" differently as it distinguishes how "Content" in open forums, limited public forums and non-public forums may be regulated, if at all.

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. Current examples include Facebook, Instagram, Twitter, YouTube and this policy includes 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.

COMMENT: Having multiple administrators is not the preferred option in an area that requires specialized training and may result in inconsistencies in application and enforcement. In adopting this Policy a City/County may want to limit administration to one *Social Media Administrator*.

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 Administrator~~s~~*** *(Optional: The Social Media Administrator in each Department, as applicable)* must review existing departmenta~~l~~ social media sites or tools that have already been established as of the effective date of this Policy to ensure that they follow 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 implemented and 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 by City Employees or Agents 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 ensure that the ***City/County Social Media Site*** complies with any applicable public records laws.
5. Establish a process to ensure that this Policy is broadly disseminated and 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 the ***Content*** of the ***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 an ***Employees's, Agent's*** or ***Officer'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. For example, Public Records Acts, Freedom of Information Acts and Public Information Acts generally provide for the disclosure of public records but prohibit disclosure of exempt or confidential information. Specific limitations are found in Section 6.11 Intellectual Property Rights and Section 12.5 relating to 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 ***Employee***s 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*** by City ***Employees*** or ***Agents*** 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 ensure that the site complies with any applicable public records laws.

4.3 City/County ***Employee***s and ***Officers*** are responsible for ensuring that all use and contributions to the ***Content*** of the ***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 an ***Employee's Agent's*** or ***Officer'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. For example, Public Records Acts, Freedom of Information Acts and Public Information Acts generally provide for the disclosure of public records but prohibit disclosure of exempt or confidential information. Specific limitations are found in Section 6.11 Intellectual Property Rights and Section 12.5 relating to 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 Manager 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***;
ii. how the department has developed an effective strategy to develop and maintain the Site/Account/Platform; and
iii. how the content contained on the ***City/County's Social Media Site*** will be captured and retained in accordance with [insert applicable Public Records Act and Retention citations].

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***;
   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; and
   c. how the content contained on the Board, Committee, Commission or Agency Site/Account/Platform will be captured and retained in accordance with [insert applicable Public Records Act and Retention citations].
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 one or more 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, Public Records and Public Information when using ***Social Media***.

COMMENT: Any Question about usage of Social Media in any 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 soliciting 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, ex parte communications or Open Meeting Act requirements.
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.

COMMENT: In some states Open Meeting Act requirements have been interpreted to include any communications outside the meeting and in some states or jurisdictions "ex parte" communications are regulated. Similarly, in some instances a person's rights to due process are affected by ex parte or other communications and the law regarding due process must be followed. For example and for information purposes only, the Texas Open Meetings Act (TOMA) and decisions construing it reflect a confusion over what the law allows and what the law prohibits. The Texas Court of Criminal Appeals on February 27, 2019 concluded that TOMA violates the U.S. Constitution. *State v. Doyal,* No. PD-0254-18, 2019 Tex. Crim. App. LEXIS 161 (Crim. App. Feb. 27, 2019) In a series of cases in the federal courts involving officials in the City of Alpine, TX, in 2012, the Fifth Circuit concluded that TOMA survives constitutional challenge. *Asgeirsson v. Abbott*, 696 F.3d 454 (5th Cir. 2012). A panel of that court had previously reversed a decision upholding the law in a case where one member of the council emailed others seeking to have a matter placed on the council agenda for discussion. An en banc review was granted and the case was dismissed as moot. *Rangra v. Brown*, No. P-05-CV-075, 2006 U.S. Dist. LEXIS 85833 (W.D. Tex. Nov. 7, 2006); reversed by *Rangra v. Brown*, 566 F.3d 515 (5th Cir. 2009); dismissed as moot by *Rangra v. Brown*, 584 F.3d 206 (5th Cir. 2009).

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 Where a Board, Committee or Commission adopts rules limiting its official speech, 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 to the ***City/County Social Media Site***. 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. This provision does not limit the free expression of members in their personal capacity and they may express their opinions fully in such manner as the law allows. This limitation relates only to the use of the official ***City/County Social Media Site*** by officials of the City/County when acting in their official capacity. A City/County may determine not to include this provision in the Policy where it does not limit the official speech of its officers.

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 while holding that a public official in establishing a Facebook account created a public forum, 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 the portion of the opinion discussing whether platform selection might violate the First Amendment was only dicta, the discussion does not create authority binding any jurisdiction in the 4th Circuit but offers cautionary advice in selecting a social media platform and in negotiating with that platform, if possible, 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 traditional public forum or where the ***City/County Social Media Site*** has been opened as "non-public" and "limited public" forums, the ***Social Media Administrator*** is authorized to remove unauthorized Content or links posted on ***City/County Social Media Sites*** that do not conform with the requirements of this Policy in a viewpoint neutral manner.

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 specific 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. Courts have concluded that the use of social media by government can create an open (traditional) public forum; generally, where the social media platform includes an interactive component that has been established without limitation on its use, courts are likely to conclude the forum is "open" and not "limited." However, just as the government's use of other media and venues do not automatically require a conclusion that they are open (traditional) public forums, governments can limit social media sites as well. In *Davison v. Plowman*, No. 1:16cv180 (JCC/IDD), 2017 U.S. Dist. LEXIS 4348 (E.D. Va. Jan. 10, 2017), the court concluded that the county's social media policy created a limited public forum and under a limited public forum analysis, government officials may remove comments that do not comply with the policy. Under no circumstances should this policy be interpreted to allow censorship based on viewpoint; a post or comment that complies with the rules of a limited public forum cannot be censored based on the views expressed. See: *Robinson v. Hunt Cty.,* No. 18-10238, 2019 U.S. App. LEXIS 11013 (5th Cir. Apr. 15, 2019). For a discussion of regulating town meetings as limited public forums see: *Madden v. Town of Hempstead*, No. 16-CV-6835(SJF)(AKT), 2019 U.S. Dist. LEXIS 56581 (E.D.N.Y. Mar. 29, 2019).

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 traditional. The Site should prominently disclose that all ***Content*** 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 a user assents by use to the rules of the forum and the conditions established for its use as established in this Required Notice as described:

REQUIRED NOTICE AND USE POLICY

"In order to better serve its residents, the City/County of _____ utilizes user engagement tools and websites, including social media channels, to provide residents 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 removed in a viewpoint neutral manner 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].

Any questions should be directed to the ***Social Media Administrator*** at _____.
By accessing this site, posting or commenting I acknowledge having been advised of and understand 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, 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 and others' comments are subject archiving and that my comments and others' comments are subject to removal in whole or in part from this site 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,
- ***Content*** that promotes discrimination on the basis of 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 that if released violates federal or state law,
- 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 in violation of state or federal law, or
- Appear to violate the intellectual property right of the City/County or a third party under federal or state law.

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 creating 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 and accept these terms of use."

COMMENT: The "Terms of Use" form a part of identifying the forum as non-public, designated or limited. In prohibiting certain types of speech this Policy limits in a viewpoint neutral manner the topics and subjects of the forum in addition to specific topics introduced by a specific post or platform. 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 ensure 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 (traditional) public forum.

Should the City/County establish a ***City/County Social Media Site*** as an open (traditional) public forum, removal 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 (traditional) 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 (traditional) 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. See Comment to 6.1.2 for further discussion of the forum analysis used in this Policy. When a City/County establishes a non-public forum or a designated or limited public forum, it must actively manage the forum to ensure that it does not convert by use into an open public forum. See: *Hopper v. City of Pasco*, 241 F.3d 1067 (9th Cir. 2001) for an example of how a forum may through inadvertence become an open forum.

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 only be created with special approval 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 another 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].

COMMENT: This Policy does not seek to identify all instances in which other laws may apply, but adopters of this Policy should recognize that the ADA will likely require adapting a visual logo into descriptive text so its form can be accessed by people with disabilities.

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 Administrator***s 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 ***Employee***s.

(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 ***Employee***s or ***Agent***s.

(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 federal, state and other laws that establish privacy rights.

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 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 Administrator***s and ***Employee***s 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 A 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 social media 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 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, open records statutes and other applicable law.

6.15.8 ***Employee***s using ***City/County Social Media Sites*** in their official capacity, in the scope of their employment or while on duty, whether as an administrator or as a responder to a posting, must follow these guidelines:

a. Unless posting or responding as the site administrator, ***Employee***s 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.

COMMENT: Although not subject to the National Labor Relations Act, local governments need to be cognizant of rulings interpreting the requirements of the Act as decisions under the Act including those of the NLRB can be extended by state law to local governments. In this context, the use of a Logo may be a protected activity. Also see *Rothamel v. Fluvanna County*, 810 F.Supp.2d 771 (W.D. VA 2011) (County ordinance prohibiting use of the official city logo/seal by a blogger violates 1st Amendment).

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 ***Content*** 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 such ***Content*** may be removed from the site.

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

When the City/County determines to remove ***Content*** 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 ***Content*** 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 ***Content*** removed or otherwise violated this policy, the ***Employee or Officer*** may be disciplined, and applicable grievance procedures and disciplinary procedures will apply. The procedures outlined in Section 8.6 Right to Appeal Removal of Content or Application of this Policy to the Public are not intended to apply to ***Employees*** and ***Officers***.

7.0 RECORDS RETENTION, PUBLIC RECORDS AND OPEN MEETINGS

7.1 Public Records and 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.

COMMENT: The requirements of state law may extend to a person's private account when they are engaged in public business.

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: Some state open meetings laws apply to all meetings of a public body when two or more members of the same body or a quorum gather in person or through technological devices. 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 warrant 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. In a case involving Twitter where the account involved an interactive mode a court has concluded that the interactive nature of the account identified it as a public forum and prevented a user from being blocked. *Price v. City of N.Y.,* 2018 U.S. Dist. LEXIS 105815 (S.D.N.Y. June 25, 2018)

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, 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 within 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* 380 U.S. 51 (1965) 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 in an official capacity or as a representative of the City/County and may only apply when the ***Employee*** is acting in the ***Employee's*** personal capacity as a private party and when exercising the rights accorded a person under the Constitution and the laws of the United States. An ***Employee*** who feels aggrieved by any action under this Policy not covered by this Section should seek review through established grievance procedures, if applicable, 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 ***Employee***s assigned to work on and maintain ***City/County Social Media Sites/accounts*** must adhere to the principles and standards articulated in this policy. Non-exempt ***Employee***s 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 and labor agreements 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. (See: Section 12.4 below.)

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 residents, as required by law or policy.

COMMENT: In some situations Whistleblower laws or the First Amendment may protect a person who discloses confidential or exempt information and this Policy does not override those laws.

13.0 EMPLOYEE OBLIGATIONS AND RESTRICTIONS IN PERSONAL USE OF SOCIAL MEDIA

13.1 Preamble. The City/County recognizes that many City/County ***Employee***s use Social Media tools such as Facebook in their personal lives. Therefore, this policy provides guidelines for City/County ***Employee***s when they communicate on Social Media sites as a private party where doing so may be considered a violation of their rights of free speech, and requires ***Employees*** when they are speaking as private party to 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 or connected with 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 in their personal capacity, ***Employee***s must use a disclaimer, which establishes that their comments represent their own opinions and do not represent those of the City/County.

13.5 ***Employee***s 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 ***Employee***s 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 ***Employee***s' private 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 following guidelines apply to personal communications using various forms of social media:

a. The City/County expects its ***Employee***s to be truthful, courteous, and respectful toward supervisors, co-workers, residents, 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 ***Employee***s and ***Agent***s 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. ***Employee***s and ***Agent***s 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. As noted previously, other laws may apply and the use of a Logo may require descriptive text to comply with the ADA. In addition, there may be instances when a person is exercising First Amendment protected speech when using a City/County Logo, brand or other identifier and this Policy does not intend to violate that person's private rights if protected by the First Amendment.

c. ***Employee***s and ***Agent***s 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 necessarily represent those of the City/County."

d. Incidental and occasional access to personal social media websites during work hours may be permitted, but ***Employee***s 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 ***Employee***s' and ***Agent***s' 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.

COMMENT: The Federal District Court for the District of Nevada concluded that a police department's social media policy was sufficiently clear and based to allow the department to discipline police officers who violated the policy during their off-duty hours. The policy provided: "Public employees have qualified First Amendment rights. As public employees, speech, on-or off-duty, made pursuant to official duties is not protected speech under the First Amendment and may form the basis for discipline if deemed detrimental to the efficiency of operations of the department;" *Sabatini v. Las Vegas Metro. Police Dep't*, No. 2:17-cv-01012-JAD-NJK, 2019 U.S. Dist. LEXIS 44481, at *4 (D. Nev. Mar. 19, 2019). Also see: *Grutzmacher v. Howard Cty.,* 851 F.3d 332 (4th Cir. 2017) for another decision discussing the balance between the rights of a public employee and the right of the employer to discipline for speech that disrupts the mission of the department and the workplace. For a decision finding that a department's social media policy was vague and potentially overbroad see: *Moreau v. St. Landry Par. Fire Dist. No. 3,* No. 6:18-cv-00532, 2018 U.S. Dist. LEXIS 142659 (W.D. La. Aug. 8, 2018), however, subsequent rulings in the case evidence that despite the ambiguity of the policy, the employee's Facebook post was relevant to the decision to terminate his employment *Moreau v. St. Landry Par. Fire Dist. No. 3*, No. 6:18-00532, 2019 U.S. Dist. LEXIS 143952 (W.D. La. Aug. 23, 2019) and a decision on September 10, 2019, in which the court granted summary judgement to the defendants in a decision in which the court analyzed the complaint under *Garcetti* (*Garcetti v. Ceballos*, 547 U.S. 410, 417, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006)) finding that Moreau's posts were

expressing unprotected private concerns noting: "When considering form, the Court finds that this factor weighs against a finding of public concern. Facebook posts are viewed only by the "friends" one allows on that site unless the Facebook post was made public. There is no evidence that Moreau's post was public. Further, his comment was made in response to a comment by one of his Facebook friends, not on a public page, community board, or other place where one might make a complaint of public concern." *Moreau v. St. Landry Par. Fire Dist. No. 3*, No. 6:18-00532, 2019 U.S. Dist. LEXIS 154641 (W.D. La. Sep. 10, 2019) . As an example of a policy that does not pass First Amendment muster, one that "prohibits speech that brings "embarrassment or discredit to the Town of Davie" offers a litigable claim of facial overbreadth citing *Moreau*. *Stroes v. Town of Davie*, No. 18-62760-CIV-MORE, 2019 U.S. Dist. LEXIS 87188 (S.D. Fla. May 22, 2019)

f. Each situation will be evaluated on a case-by-case basis because the laws in this area are evolving. ***Employee***s 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].