

Model Social Media Policy

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The Social Media Policy is being reviewed in light of the United States Supreme Court case *Lindke v. Freed*, 144 S. Ct. 756, 759 (2024). Read the National League of Cities blog on the case [here](#).

Introduction

VLCT developed this social media policy to address some of the common risks and administrative concerns that Vermont municipalities may face when utilizing social media. No policy can anticipate every potential liability exposure in this ill-defined and constantly evolving legal landscape; therefore, municipal managers, administrators, and members of legislative bodies will need to periodically review and update any policy that is adopted. Please note that this policy focuses on how a municipality manages and uses its own social media platforms. It does not specifically address how employees or elected and appointed officials use their own *personal* social media. Therefore, if a municipality wants to regulate its employees' personal, off-duty use of social media, it should do so in a personnel or other policy specific to their behavior after consultation with its attorney.

Why Adopt a Social Media Policy?

The term “social media platform” (or just “social media”) refers to a computer- or mobile-based online application that facilitates the sharing of information among individuals, groups, and other online communities.

The seemingly ubiquitous social media environment has changed the way municipalities around the country deliver governmental services and communicate with their citizens. As reliance upon social media becomes more pervasive and people become increasingly accustomed to the nearly instantaneous exchange of and access to information, Vermont's municipalities will be expected to use this tool to promote upcoming events, meetings and

deadlines, communicate public safety concerns, market their communities, share news and other information, and encourage and facilitate public participation and feedback.

Despite this pressure, the benefits of using social media must still be weighed against the potential risks, which include the potential liability for:

- violating users' First Amendment rights (see Section 6 of policy);
- allowing content to remain that is obscene, threatening, defamatory, or copyright (see Section 6 of policy); or
- violating the Open Meeting Law or Public Records Act (see Sections 10 and 12 of the policy).

Do Your Homework!

Before adopting a social media policy, each municipality should do three things:

1. Take some time to consider your motivations and their implications.

- *What do you want to accomplish?*
- *Is social media the appropriate tool to accomplish your goals?*
- *What are the benefits of social media versus the risks of liability exposure?*
- *Who will be responsible for account/content management, administration, and training?*
- *Does your municipality have the resources to implement this policy and use social media effectively?*
- *What are the costs associated with utilizing social media?*
- *Who will answer these questions?*

For some municipalities, balancing the benefits and potential risks of using social media may result in the realization that a traditional website will satisfy the same goals.

Keep in mind that information posted by a municipality on its social media platforms will supplement but not replace statutorily required notices and standard methods of providing warnings, postings, and notifications about public meetings, hearings, and legal proceedings under Vermont law.

2. Decide which, if any, of your social media platforms will permit public content and participation.

The simplest and safest course of action is for a municipality to use its social media platform as a means for one-way communication from the municipality to the public. On this type of platform, there is no need for municipal officials to moderate, respond to, or manage public content. A municipality may disable or disallow public content on its social media platform and make it clear that it is reserved for government speech only – that is, to allow municipal officials to post notices and information. However, keep in mind that social media is meant to be interactive so the public will likely expect to communicate with the municipality. If the municipality plans to prohibit all public interaction on a social media platform, a better alternative would be to only use its website for one-way communication.

If a municipality opens any of its social media platforms to public content, then it is important to ensure the policy's restrictions are objective, the forum is consistently monitored, and the municipality's policy is consistently enforced. The municipality must designate someone to moderate the content to ensure it complies with the policy's terms of use, for example that the content is not profane, obscene, threatening, sexual, defamatory, or copyright, and that it doesn't encourage illegal activity, etc. A municipality could be liable if it allowed these types of content to remain and a harm resulted. On the other hand, a municipality must be careful not to violate the First Amendment rights of the users of its social media platforms. Generally, the First Amendment restricts the government from discriminating against speech based on its content or viewpoint. Therefore, when a municipality enables users to place content on its social media platform, it cannot edit, hide, or delete content merely because it is critical of the municipality or a municipal official. To ensure user content is being moderated appropriately, the municipality must identify the purpose of each of its social media platforms and clearly designate it as either a "limited public forum" or "government speech forum." Our model policy contains a section that allows for such identification.

A "limited public forum" allows discussion of certain topics and imposes limits on others; user content must be related to the topic or it is subject to removal. This type of forum allows the consistent application of reasonable restrictions, for example, a municipality's Facebook page that allows users to reply to a municipal post as long as the user's content is reasonably related to the initial post.

Conversely, a “government speech forum” only allows the municipality to convey information about, for example, initiatives or events. Public user content is disabled. (Many official municipal websites are government speech forums, used exclusively by municipalities to post information about initiatives or events.)

Failure to designate a social media platform as either a limited public forum or a government speech forum, identify its purpose, and moderate its content accordingly may result in an increased risk violating a user’s First Amendment rights. (See Section 5 of the model policy for a designation process.) Note that if a municipality has designated a social media platform as a limited public forum but fails to consistently moderate user content, the platform may become a de facto unrestricted public forum (such as parks, sidewalks, and other public areas traditionally open to public speech), further restricting the municipality’s ability to limit or remove content.

3. Make sure there are no legal inconsistencies. Prior to its adoption by the municipal legislative body, the policy should be reviewed to ensure that it is consistent with any other existing municipal policies and contracts, including personnel policies, job descriptions, employment manuals, and labor agreements.

Customizing the Model

Please read the policy carefully as this model policy must be customized to suit the needs of your municipality. Carefully consider each element in light of your community’s resources and expectations. **We marked suggestions for editing this policy with bracketed italicized text:** *[insert text]*.

Additionally, several of the policy’s provisions require municipalities to post certain information on their official websites or to their social media (e.g. see Section 10 which states “The name, title, and contact information for the proper custodian of public records shall be posted on each municipal social media platform.”).

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