The 6th Council Member: Social Media

#MCMXF19

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Your Panel

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Why We Proposed This Session

• “Social media” = what we get asked to talk about the most.
• Public agencies are embracing it more & getting creative.
• Online community groups are becoming powerful.
• Listening to community conversations can also be powerful.
• 21st-century community engagement is evolving. Social media & community engagement go hand-in-hand.

The medium equates the messenger
Community Group
4-5x size of:

Official City Page

Local Newspaper

What You Will Learn

• Unique insights from 3 different viewpoints: legal counsel, City administration, and Council Member
• More appreciation for what SM can do
• Ideas about positive ways to leverage SM for your city
• Common pitfalls to avoid for personal/professional use
• Better understanding of how to distinguish “vocal minority” rants from more widespread community concerns
• Write down your questions and we’ll answer as many as we can at the end!
What We Mean by “Social Media”

- Profile – personal
- Page – professional
- Group – personal
- Profile – personal
- Agency Page – professional
- Channel – personal or professional

Criticizing Govt. Isn’t New, Just Easier

Then A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people. #ByeFelicia

Now
Trust in Government is Low

Trust in federal govt. at all-time low (past 60 years)

Keyboard Courage

Obvious hyperbole

Person lacks knowledge & context about City Council decision

Complaint about a bus system that wins national awards for excellence

Complaint about City that posted updates every day on multiple platforms about a serious crime
Social Media is the New Normal

• Given potential negatives, opting out is tempting.
• **BUT** if you want to serve your community, you need to be able to listen to them.
• And social media can be powerfully good.

Your Residents Are on Facebook

• #3 website in world
• 68% of Americans
  – Only 51% of teens
  – 41% of seniors
• 58 minutes per day, 10-12 min. at a time
• 7-10 ad clicks/month
• Instagram tie-in
Local Gov is Embracing Social Media

- Customer service
- Being your own media outlet
- 2-way vs. 1-way communication

Local Gov is Embracing Social Media

- Crowdsourcing content
- Public safety agencies solving crimes
- Social media as “public forum,” potentially referenced in Council Meetings
Social Media Can Tell Your Best Stories!

• Show off your services, programs and the beautiful parts of your community
• Ask others to show their love for where they live, work and play

This post about lifeguards and feel-good Council action got 133 reactions, vs. 10-15 for other posts around the same time.

Tell Your Best Stories!

• “Your tax dollars at work”
• Can’t go wrong with: children, animals, men & women in uniform (or all 3)
Listening is a culture
Why we heart social media for community engagement

1. Cost-effective
2. Print media is dying
3. Content is visual
4. Easy customer service
5. ‘Canary in the coal mine’
6. Metrics!

Engaging On Social Media Helps Working Class

- Can’t expect public to physically come to you when other tools are available.
- Favoring social media direct messaging over phone, email, contact forms, etc.
Engaging On Social Media Helps Working Class

The next wave: live streaming public meetings on social & accepting public comments

Personal vs. Professional on Social Media

- Facebook: Profile – personal, Page – professional, Group – personal
- LinkedIn: Profile – personal, Page – professional, Group – personal
- Instagram: Profile – personal
- Twitter: Profile – personal
Don’t Feed the Trolls!

Arguing online is a lose-lose situation

I learned long ago, never to wrestle with a pig. You get dirty, and besides, the pig likes it.

— George Bernard Shaw

AZ QUOTES

“With Great Power...”

• You, too, can be an “Influencer”
• More (real) Followers means:
  – More opportunities for community engagement
  – A stronger platform for advocacy at County, State and Federal levels
Social Media is Great! But ...

- There are still precautions to take to ensure you are in compliance with the law and the court of public opinion.

Public Forum: Social Media vs. Traditional Website

- A traditional website pushing out information in one direction—to the public—does not establish a public forum, and that means the entity does not risk violating First Amendment rights when it excludes content.
  
  — Real world example: Vargas v. City of Salinas (Cal. 2009) 46 Cal.4th 1
Social Media As Public Forum

- Social media has become a vital platform for speech of all kinds.
- Social media may now be “the most important” modern forum “for the exchange of views.”

What Kind of Forum?
Public Forum or Limited Public Forum

Public Forum: highest level of scrutiny; narrowly tailored to achieve compelling government interest

Limited Public Forum: restrictions must be reasonable and viewpoint neutral
Takedown Litigation

• Public entities face litigation for deleting comments and banning users from the page that are critical of the entity.


First Amendment Constraints
Public Agencies Cannot Prohibit:

Comments critical of you or your City based on policy issues

Comments based on the viewpoint expressed
Is a “Personal” Page a Public Forum?

Case law is still developing, but possibly YES. Factors:

- Does the official identify as a government official?
- Does the official use it to address constituents?
- Does the official use it to share info of importance to the community?
- Does the official post photos of community events?
- Does the official use it to acknowledge colleagues or City employees?
- Does the official use it to discuss their work as government official?
- Are there any links to the City’s website or social media pages?
- Do the official’s constituents have access to the page?
- Does the official use any City resources?

“Liking” and the First Amendment

Bland v. Roberts (4th Cir. 2013)

- Sheriff terminated employees who supported his opponent in an election, allegedly for poor performance
- Many of the employees had only “liked” his opponent’s Facebook page
- The Court held that “liking” a page was pure speech and symbolic expression, and that the Sheriff’s interests in maintaining effective services to the public were outweighed by the employees’ interest in highly-protected political speech
Social Media and the Brown Act

• Members of legislative bodies cannot meet to discuss official business unless the meeting complies with the Brown Act
• Must have public notice and access to the meeting
• The Brown Act does not prevent individual members from publishing their own comments and opinions

Social Media and the Brown Act

• Brown Act would not apply to social media engagement by elected official IF a quorum does not discuss specific business within their jurisdiction
  – Individual posts are ok
  – But do not respond directly to posts of other electeds
  – “Discuss” does not include emojis or “Likes”
Conflicts and Biases

- Duty to make decisions motivated by the public good, not personal interests
- Duty of loyalty
- Duty of fairness (i.e., avoid conflicts of interest)
- Duty to treat all members of public in fair & unbiased manner
- Disclosure of “ex parte” communications when item is on Agenda for discussion/action.

You’re Always on the Record!

- Treat your social media pages like an open mic.
- Be transparent and open.
- Have ‘public conversations’ with your constituents.
- You don’t have to weigh in on *everything*.
- Don’t post when angry, impaired, etc.
- Don’t tweet about pending agenda items.
- No restrictions on content not within your jurisdiction.
Rule of Thumb

“Never put anything on any social network that you wouldn’t be comfortable with appearing on the front page of your local paper. When you put something out there digitally, it’s out there forever.”

– Pennsylvania State Representative Michael Schlossberg

Check Your City’s Policies

• Know what you’re allowed to do on the City’s social media sites in your elected official capacity.

• You might not be allowed to share content, even if it’s positive.

• West Hollywood takes the strict approach:
  
  – “3.7. City social media sites shall be managed consistent with the Brown Act. Members of the City Council, Commissions and/or Boards shall not respond to, ‘like’, ‘share’, retweet or otherwise participate in any published postings, or use the site or any form of electronic communication to respond to, blog or engage in serial meetings, or otherwise discuss, deliberate, or express opinions on any issue within the subject matter jurisdiction of the body.”
Nextdoor is GROWING!

Challenges of Nextdoor

- Cities may HATE it. Cities have to use it.
- Cities co-opted into its growth
- Can’t view convos in Neighborhoods
Why You Should Embrace Nextdoor

• Cities are about PLACE. So is Nextdoor.
• Neighborhood Leads = your Neighborhood Watch
• “Urgent Alerts” feature!
• GIS map integration for targeted messaging
• Every member sees every Agency post!

Leverage Your City’s Website

• If you need to respond to misinformation, facts should be available on your City website.
• Cuts down on back-and-forths in social media comments.
Responding as a Council Member

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

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

Know When News Is Breaking

• Set up a Google Alert for your City’s name & your name
• Do you get emergency alerts on your smartphone?
Have Process in Place Before Emergency

• Does your PIO or CM loop you in on emergencies ASAP?
• Does your Media Inquiry Policy encourage you to speak directly to media/news/blogs?

How to Increase Constituent Engagement

1. Give people the content they want
2. Ask questions, then respond
3. Pay for it (Boosted Posts & ads)
Don’t Go “Rogue”

- Annoyance vs. a real legal issue.
- What can fellow Council Members or City staff do to mitigate?
- Don’t risk a lawsuit.

Individual Rants vs. Widespread Concerns

- “I saw on Facebook...” or “I saw on Nextdoor...” can be dangerous for Councils.
- Without scientific survey data, hard to tell a complaint from a vocal minority from concerns of the majority (who just aren’t speaking up).
- How do you tell the difference?
Don’t Hide Comments or Block People

HIDE NOT.
DELETE. OR DELETE NOT.
THERE IS NO HIDE.

Donald J. Trump
@realDonaldTrump

My use of social media is not Presidential - it's MODERN DAY PRESIDENTIAL. Make America Great Again!

3:41 PM - 1 Jul 2017

55,437 Retweets 194,865 Likes

76K 55K 195K
Knight First Amendment Institute at Columbia University V. Trump et al

302 F.Supp.3d 541 (S.D.N.Y. 2018)
Currently on appeal to the Second Circuit

• Donald Trump established @realDonaldTrump in March 2009, which he has used since his inauguration to communicate with the public about his administration.

• The 7 individual defendants tweeted a critical message in reply to a tweet, and were blocked by the President. The government did not dispute that they were blocked because of the content of their tweets.

• Plaintiffs could not view, reply to, or retweet original tweets, but they could still engage via other users’ replies. They could also see the original tweets from a secondary account or when not signed into their blocked account.
Banning, Blocking and Takedown

Chair of County Board of Supervisors temporarily banned a resident who posted about County corruption on the Chair’s Facebook page.

Chair acted under color of State law in maintaining a govt. official Facebook Page and in banning resident from Page.

The “interactive component” of the Chair’s Facebook Page qualified as a public forum under the First Amendment.

“Unlawful viewpoint discrimination by banning resident.”

Greben vs. City of San Mateo
David Lim @SanMateoDavid - 18 May 2017
Unblocked my twitter 2 all so everyone can c important things I do. Like eat this donut. 🍩 @smdailyjournal @JonMays

David Lim @SanMateoDavid - Jan 17
Blocked my first account post-City Council. It felt AWESOME. @CityofSanMateo @AngelaGreban

Marilyn K. Geary @MarilynKGeary2 Follows you
Way ahead o’v’all.

Block @MarilynKGeary2
@MarilynKGeary2 will no longer be able to follow or message you, and you will not see notifications from @MarilynKGeary2.

Cancel Block
Ya might think twice about asking this Sheriff over for dinner. Thanks but no thanks are in order for...
Grant Stern, a local radio host and activist, sued the City of Miami and its Mayor, Philip Levine, over access to the list of people Levine has blocked on his Facebook account; audio recordings of “The Mayor,” a Sirius/XM show Levine hosts, and a month’s worth of Levine’s Twitter posts.

Levine identifies himself as the Miami Mayor on his Twitter and Facebook pages, and posts about official city business and political issues.

Levine blocked Stern after Stern responded to a Levine tweet where he was critical of potential pollution into Biscayne Bay by the City’s stormwater system.

**Stern v. City of Miami**

**Questions?**
Thank you, League of CA Cities!

Full presentation is available on www.cacities.org