

MODEL



# Model Email and Social Media Policy

APRIL 2018

Last reviewed by LOC attorneys April 2024

## **FOREWORD**

Technology has become an everyday part of the workplace. Computers and the internet are now standard workplace tools. In a very short span of time, social media has evolved from a technological fad to a potentially long-term, effective communication option for cities. Cities should develop a comprehensive email and social media use policy to manage legal risks such as violations of public records law and protections on free speech.

This model does not address the off-duty private use of email and social media accounts that does not relate to public business. However, emails and social media posts are considered public records if they relate to the city's business regardless if the email is sent from or the social media is posted from a private account. Thus, these public records must be properly retained pursuant to the city's records retention policy. Additionally, cities may not restrict an individual's First Amendment free speech rights by regulating the content of their social media posts. Cities may, however, regulate the time, place, and manner in which free speech is permitted and thus, manage public comments on the city's social media accounts accordingly.

## **DISCLAIMER**

Any model document provided by the League is intended to be used as a starting point in an individual city's development of its own documents. Each city is unique, and any adopted document or policy should be individually tailored to meet a city's unique needs.

This model is not intended as a substitute for legal advice. Cities should consult with their city attorney and/or the CIS Pre-Loss Legal Department before adopting an email and social media policy to ensure that the policy complies with all aspects of federal, state, and local law.

# MODEL EMAIL AND SOCIAL MEDIA POLICY

## Part I: Email

### Use

1. Each staff member and official will be assigned a unique email address that is to be used while conducting city business via email. The unique email address assigned to an employee is the property of the city. An individual may only use their assigned email address while employed by the city.
2. The city retains the right to intercept, monitor, review and disclose any and all messages composed, sent or received.
3. All email systems are city property. All messages stored on city systems or composed, sent or received by any staff or official are the property of the city. Furthermore, all messages composed, sent or received by any person using city-provided equipment are property of the city. Emails are not the property of any employee or official.
4. Email systems are intended to be used primarily for business purposes. Any personal use must not interfere with normal business activities, must not involve solicitation, and must not be associated with any for-profit business activity.<sup>1</sup> All messages sent by email are city records.
5. The use of privately owned email accounts for sending and receiving work related email messages is highly discouraged. However, if these resources are used for work-related purposes, the user must transfer all work-related messages to a city-owned system or network and must realize that these private accounts may be subject to public disclosure and retention requirements.
6. All communications via email in connection with the transaction of public business constitute public records except under certain circumstances. Electronic communications, like other public records, must be available upon request to any individual, agency or others outside the organization, unless the information is legally exempt from disclosure.
7. Except as specifically designated below, city staff and officials are prohibited from using City email accounts to send or receive:
  - a. Information about actual or potential claims and litigation involving the city;
  - b. The intellectual property of others, without written permission;

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<sup>1</sup> Cities who wish to limit email use to business purposes only should replace this language with the following: "Email systems are to be used for business purposes only. Personal use of city email systems is strictly prohibited."

- c. Photographs of employees or members of the public, without written permission;
- d. Any personal, sensitive or confidential information;
- e. Computer viruses or other harmful programs;
- f. “Chain letters” or junk mail;
- g. Material or comments that are derogatory to any individual or group, or of a defamatory, threatening or harassing nature;
- h. Racist, sexist and other disparaging language about a group of people;
- i. Obscene, pornographic, offensive or illegal materials or links;
- j. Sexual comments about, or directed to, anyone; or
- k. Any communication for any other purpose which is illegal, against city policy, or contrary to the city’s interest.

This prohibition does not apply to attorney-client communications between city staff and officials and the city attorney or other city staff and officials designated to assist with legal matters.

**Records Retention:**

1. The city must maintain and preserve records in compliance with the Oregon Public Records Law. The Public Records Law applies regardless of whether the email communication is sent from a public or private email address.
2. The retention of records stored in electronic systems, including email, is governed by the city’s retention schedule and OAR Chapter 166, Division 200. If you have a question regarding the retention of a record, please contact the city recorder<sup>2</sup>.
3. An email inbox should not be used for storage. The email should be printed and put into the appropriate file.<sup>3</sup> However, email related to a current project or issue may be retained on the system as a reference tool. Once the project is completed or the issue resolved, the user should transfer all relevant email to the appropriate file and delete the email from their inbox.

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<sup>2</sup> If appropriate, replace “City Recorder” with the city’s designated records custodian.

<sup>3</sup> If the city utilizes an electronic filing system, this sentence should be modified to designate the proper electronic file location (e.g. “The email should be saved in the ‘Email’ folder in the E: drive”).

## **Security Precautions**

1. Viruses and other malicious code can spread quickly if appropriate precautions are not taken:
  - a. Be suspicious of messages sent by people not known by you.
  - b. Do not open attachments unless they were anticipated by you.
  - c. Disable features in emails that automatically preview messages before opening them.
  - d. Do not forward chain letters; simply delete them.

**Any staff member in violation of this email policy is subject to disciplinary action pursuant to the city's personnel manual, including but not necessarily limited to termination.**

## Part II – Social Media

### Use

1. “Social media” includes blogs, Facebook, Twitter, YouTube, and other similar accounts.
2. The city shall identify those employees authorized to use social media on behalf of the city. Only those employees who are authorized shall engage in social media activities on behalf of the city. The city manager<sup>4</sup> shall maintain a list of authorized social media users.
3. All social media accounts shall be created using a city-issued email address, whenever possible.<sup>5</sup> This will ensure that:
  - a. Personal and professional communications are separated;
  - b. The city can back up public conversations because the city owns and controls the email address;
  - c. The city can access the site when the employee is out on vacation or otherwise away from the office or leaves employment with the city; and
  - d. The city can determine that the site is legitimately the city’s and not a rogue site generated from a private email address.
4. The city shall notify users and visitors to the social media site that the purpose of the site is to facilitate communication between the city and the public. Each site shall contain the following message:

This site is created by the city of \_\_\_\_\_. This site is intended to serve as a mechanism for communication between the public and the city of \_\_\_\_\_ on all topics relevant to city business. The city of \_\_\_\_\_ reserves the right to remove comments or postings that violate any applicable laws. A list of content that will be removed may be viewed at: *[insert hyperlink to user guidelines<sup>6</sup>]*. Postings to this site are public records of the city of \_\_\_\_\_ and may be subject to disclosure under the Oregon Public Records Law.

The city of \_\_\_\_\_ does not endorse nor sponsor any advertising posted by the social media host, that the social media is a private site, or the privacy terms of the site apply. The city of \_\_\_\_\_ does not guarantee reliability and accuracy of any third-party links.

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<sup>4</sup> Or another designated staff member.

<sup>5</sup> Some social media sites, such as Facebook, may prohibit creation of a government “page” without the use of a personal account. In those instances, the city should provide a process for transition of page management in the event the person holding the primary personal account associated with the page leaves the city.

<sup>6</sup> Sample social media user guidelines are provided in Appendix A.

5. Where possible, all social media sites will display the city’s logo for consistency and authenticity.
6. Social media posts are considered public records if posts are made on an official city account; *or* on a city staff member or official’s public or private account which makes or receives comments on city matters.
7. The city and its employees and officials shall not discriminate against public speech based on content or viewpoint. The city, its staff, and its officials may not engage in viewpoint discrimination. All persons who wish to “friend,” “follow,” “re-tweet,” etc. must be allowed to do so.
8. The following content posted by the public may be removed:
  - a. Comments not topically related to the particular article being commented upon;
  - b. Comments in support of or opposition to political campaigns or ballot measures;
  - c. Profane language or content;<sup>7</sup>
  - d. Content that promotes, fosters, or perpetuates discrimination upon the basis on race, religion, gender, gender identity, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, source of income, or other protected status under applicable law;
  - e. Inappropriate sexual content or links to inappropriate sexual content;
  - f. Solicitations of commerce, *e.g.*, ads;
  - g. Conduct or encouragement of illegal activity;
  - h. Private and confidential information;
  - i. Information that may tend to compromise the safety or security of the public or public systems; or
  - j. Content that violates a legal ownership interest of any other party.

These guidelines shall be displayed to all users or made available by hyperlink. Any content removed must be retained, including the time, date and identity of the poster when available.

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<sup>7</sup> It is advisable to verify with your city attorney regarding the inclusion of this clause.

## Records Retention

1. The city must maintain and preserve social media records in compliance with the Oregon Public Records Law. The Public Records Law applies regardless of whether the social media site is hosted by the city or a third party.
2. Those engaged in social media activities must be familiar with the city’s records retention schedule. Any posted original content that is not a copy of a preexisting city record must be captured and retained by saving a copy and providing it to the city’s records custodian.
3. Social media content shall be retained by composing and retaining message in local software and noting the time and date posted, or by capturing screenshots of the post once it is on the page.<sup>8</sup>
4. Non-Original Social Media Content Maintained Elsewhere  
Any posted content that is a copy of a city record that exists in another location does not need to be separately preserved, provided that the original content is being retained in compliance with the appropriate city retention schedule and media preservation requirements. Employees should use social media applications exclusively as a mechanism for providing the public with links or references to content that is maintained as an official city record elsewhere. Links or references posted to social media accounts are considered convenience copies which need to be retained only “as needed” or “until superseded.”
5. Original Social Media Content  
Any posted original content that constitutes a city record and that is not preserved and retained elsewhere in compliance with the appropriate city retention schedule, must be captured by the city and retained according to the appropriate schedule and preservation requirements. The person who posts the content is responsible for retaining and preserving the record.
  - a. Speeches/Statements/News Releases/Program Activity Records  
Content that contains written or photographed accounts of a city event, or summary of such events posted to social media are considered statements and reports for retention purposes and should be retained generally for two years from the time they are “published.” If these posts contain policy or historically significant content, they must be retained permanently.
  - b. Correspondence  
Incoming messages from the public that arrive via the city’s social media account should be treated as correspondence. Messages completely unrelated to the city’s activities does not need to be retained. If the message relates to the city’s activities or

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<sup>8</sup> A city may also utilize third party software that can coordinate multiple social media accounts and capture social medial content automatically for a city.



functions, it must be captured and retained per the retention category that most closely corresponds to the content of the message. Staff are advised to respond to correspondence via email or other “offline” messaging methods and if possible, communicate directly with the individual and maintain that correspondence.

c. Content Associated with a Specific Function or Activity

Information received from the public in response to social media posts used as a public entry point to solicit specific information—such as conducting a poll or to launch a process or placing an order—should be retained along with other records associated with that function or activity using the appropriate retention schedule.

**Any staff member in violation of this social media policy is subject to disciplinary action pursuant to the city’s personnel manual, including but not necessarily limited to termination.**

## Appendix A – SAMPLE SOCIAL MEDIA USER GUIDELINES

The city of \_\_\_\_\_ encourages the public to share thoughts as they relate to the topics being discussed on the city’s social media sites. The views expressed in visitor comments reflect those of the comment’s author and do not necessarily reflect the official positions of the city of \_\_\_\_\_. Public comments are considered public information and may be subject to monitoring, moderation, and disclosure to third parties. Users shall refrain from posting and the city of \_\_\_\_\_ reserves the discretion to remove:

- a. Comments not topically related to the particular article being commented upon;
- b. Comments in support of or opposition to political campaigns or ballot measures;
- c. Profane language or content;<sup>9</sup>
- d. Content that promotes, fosters, or perpetuates discrimination upon the basis on race, religion, gender, gender identity, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, source of income, or other protected status under applicable law;
- e. Inappropriate sexual content or links to inappropriate sexual content;
- f. Solicitations of commerce;
- g. Conduct or encouragement of illegal activity;
- h. Private and confidential information;
- i. Information that may tend to compromise the safety or security of the public or public systems; or
- j. Content that violates a legal ownership interest of any other party.

These user guidelines may be subject to modification at any time.

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<sup>9</sup> It is advisable to verify with your city attorney regarding the inclusion of this clause.