The 6th Council Member: Social Media

#CaCitiesAnnual
The medium equates the messenger
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
- PAGE professional
- GROUP personal
- PROFILE personal
- PAGE professional
- AGENCY PAGE professional
- CHANNEL personal or professional
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
- 69% of Americans
  - Only 51% of teens
  - 46% 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

Quick answer
Lots of love
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.
#CulverCity strives to provide our community with opportunities to learn about City business and policies, and provide input in a timely manner. If you have questions about any of this week’s meetings, please contact City Hall at (310) 253-5851. http://culvercity.org/agendas
On August 12, interim rent control measures went into effect for a 12-month period. See the back of this flyer for what you need to know, whether you’re a landlord or a tenant.

culvercity.org/rent

Key provisions of the Ordinance include:

- For all rental units in Culver City built on or before January 1, 1995 (except as noted), there is now a rent cap of 3% above the rent that was in place on June 11, 2019.
- The rent cap does not apply to rental units first occupied after January 1, 1995.
- The rent cap does not apply to detached single-family homes, separately owned condos & townhouses, owner-occupied mobile homes, or Section 8 housing.
- There is a petition process for landlords to request relief from the rent cap (in certain situations).
- “For cause” and “no-fault” grounds are required for evictions. Relocation assistance (three times monthly rent, plus $1,000) may be available for no-fault evictions.
- All landlords must register each rental property with the City by February 2020. The City will notify landlords of registration is open.
- From now until August 2020, the City Council will study whether these and/or other rent control measures should become permanent.

Call the Housing Division at (310) 253-6782 if you need information in Spanish.
Online Commentator  You
Meghan Sahli-Wells
@M_Sahli_Wells

Mayor & Mom.
I made #CulverCity 100% renewable, 🚲 2 work & fight 4 environmental justice.
@localprogress @cleanpowerinfo Boardmember.
Tweets personal ≠ official

Culver City  meganambahliwells.com  Joined October 2009

1,303 Following  1,587 Followers
Social Media: Legal Constraints on Public Officials

• The First Amendment

• The Brown Act

• Fair Process Rules in Quasi-Judicial Proceedings
The First Amendment

Public officials who use social media may be subject to the requirements of the First Amendment.

Are you communicating about matters within the subject matter jurisdiction of your agency?

Is there two-way communication?
Social Media As A Public Forum
Subject to the First Amendment

• Speech occurring in a public forum is protected by the First Amendment and the ability of the government to regulate the speech is limited.

• The degree of First Amendment protection depends on the type of forum in which the speech occurs.
Traditional Public Forum

• Areas where speech has traditionally occurred: Parks, sidewalks, plazas

• Restrictions on speech are valid only if narrowly tailored to achieve a compelling government interest

• Content-neutral time, place and manner restrictions are OKAY
Designated Public Forum

A forum designated by the government for use by the public where speech may occur.

Can be limited to a particular issue/subject or unlimited.
An unlimited designated public forum is governed by the same strict scrutiny standard as a traditional public forum.
In a limited designated public forum, reasonable content-based restrictions intended to limit the forum for its designated purpose are valid. Example: Cities may delete comments from their interactive website designed to discuss City playgrounds irrelevant comments about the federal government’s foreign policy.
Regardless of the type of public forum, the government may *never* limit access based on the speaker’s viewpoint or identity.
President Trump has been using the @realDonaldTrump twitter account since 2009.

After his election, the President has used this account to communicate with the public about his presidency and administration, among other matters.

Individuals who were “blocked” from viewing or replying to tweets on the President’s account based on the critical nature of their earlier tweets sued the President under the First Amendment.
The Court of Appeals concluded:

The President’s Twitter account was a public forum.

Regardless of the type of public forum, blocking the tweets constituted viewpoint discrimination, and therefore violated the First Amendment.

Although the public has no right to be heard by the government, blocking users interfered with their First Amendment right to communicate with other users who visited the Twitter page.
Blocking or Deleting Comments on Social Media Sites May Lead to Litigation

- **Davison v. Randall**
- County Supervisor Chair blocked a member of the public from the “Chair Phyllis J. Randall” Facebook Page based on critical comments about the Chair and school board members.
- The court concluded that the Chair’s Facebook Page was a public forum, without deciding which category of public forum it fell under.
- Why? Because limiting an individual’s speech based on viewpoint will always violate the First Amendment.
A Public Agency May Not Ban or Delete Comments Based on Content

• Based the viewpoint or identity of the speaker
• Because comments are critical
Can a “Personal” Webpage Become a Public Forum?

• The *Trump* case shows that courts may conclude that an official has created a public forum on his or her “personal” webpage.
Can a “Personal” Webpage Become a Public Forum?

• Factors:
  – A public official controls the content of the page
  – The site invites or allows comments by the public
  – The official posts about matters within the subject matter jurisdiction of her agency
Can a “Personal” Webpage Become a Public Forum? (Cont.)

• Factors (continued):
  – The site used to promote the views of the official on agency-related matters
  – The official uses an agency computer, tablet, phone or other agency resources to manager or communicate through the webpage
Can Simply “Liking” a Post Raise First Amendment Issues? Yes!

- **Trump decision:** “A blocked account is prevented from viewing any of the President’s tweets, replying to those tweets, retweeting them, or liking them . . . . Liking a tweet conveys approval or acknowledgment of a tweet and is therefore a symbolic message with expressive content. Replying, retweeting, and liking are all expressive conduct that blocking inhibits.”
Can Simply “Liking” a Post Raise First Amendment Issues? Yes!

Bland v. Roberts

• Sheriff fired employees who supported his opponent in an election, purportedly based on performance concerns

• During the campaign, some of the employees had “liked” his opponent’s Facebook page

• The Court held that “liking” a page was protected speech, and that the employees’ right to engage in this speech outweighed the Sheriff’s asserted interests in preserving effective services for the public
Brown Act Limits on the Use of Social Media

- The Brown Act’s requirement that meetings occur in public following notice is violated if a quorum of the members of a legislative body engage in “seriatim” meetings.
- Like the use of telephone and email, public officials can conduct illegal seriatim meetings through social media.
Example of an Illegal Seriatim Meeting Through Social Media

Councilmember Garcia posts on Facebook her views about an item on the next Council agenda.

Councilmember Johnson replies to the post, criticizing the views Councilmember Garcia expressed.
Councilmember Yee then responds to Councilmember Johnson’s reply, expressing her own view about the agenda item.

Because a quorum of the five-member Council has engaged in a seriatim discussion of the agenda item outside of a noticed public meeting, they have violated the Brown Act.
Permissible Types of Social Media Use Under the Brown Act

• Matters outside of the legislative body’s subject matter jurisdiction:
  • For example, posts about baseball, wine, vacations or 17th century composers
Permissible Types of Social Media Use Under the Brown Act (Cont.)

• A single social media comment by about a City issue is likely not itself a Brown Act problem – but this a gray area.

• TIP: A clear problem exists when a quorum uses social media to discuss a City issue outside of noticed public meetings.
Failed Brown Act Amendment
Addressing Permissible Social Media Use

• AB 992 Introduced in Early 2019:
  – Would have expressly allowed a majority of the members of a legislative body to post information about agency business on social media so long as a majority does not “directly” discuss agency business among themselves.
  
  – Example: Four of the five city councilmembers would have been able to “like” ideas posted by others who are not councilmembers.
Failed Brown Act Amendment
Addressing Permissible Social Media Use (Cont’d)

• The Bill’s Early Death in Committee
  – Concerns that loosening Brown Act restrictions would disenfranchise seniors and others without social media access.
Fair Process Limitations on the Use of Social Media

• Special fair process rules apply when a City Council or Planning Commission sits in a quasi-judicial capacity.
  – For example, during an appeal from a land-use entitlement application

• Councilmembers and Commissioners Must:
  – Not prejudge the matter
  – Be Fair and Impartial
  – Make decisions based only on evidence presented during the hearing.
• A Councilmember’s posts may lead to questions about whether the Councilmember has prejudged the matter or considered facts outside of the hearing.

• At minimum, disclose all “ex parte” communications.

• Contact the City Attorney!
Be Aware of, and Closely Follow, Your City’s Social Media Policies

- Make sure you are understand your agencies policies on the use of social media
- Strictly follow those policies
- If you believe the policies are unclear or problematic, notify the appropriate agency staff
**Golden Rule:**

**Never Post What You Don’t Want in the Newspaper**

1. **Be transparent and open.**
2. Think carefully about the tenor and consequences BEFORE you post.
3. Never post angry, tired or after that extra glass of wine.
4. Resist posting about matters coming before the Council.
5. Do not block others based on their viewpoint or identity.
Nextdoor is GROWING!
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
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)
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?
Thank you, League of CA Cities!

Full presentation is available on cacities.org