

## Introduction

VCLT has developed the following social media policies to address some of the common risks and administrative concerns that Vermont municipalities are likely to face when utilizing social media. Because no policy can anticipate every potential liability exposure in this ill-defined and constantly evolving legal landscape, municipal managers, administrators and legislative bodies will need to periodically review and update any policy that is adopted.

## Why Adopt a Social Media Policy

The term “social media platform” refers to a computer or mobile based online application that facilitates the sharing of information, interactivity, and communication amongst individuals, groups, organizations, and the government.

The seemingly ubiquitous social media environment has changed the way municipalities around the country deliver government services, communicate and connect 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 information, and encourage and facilitate public participation and feedback.

Despite this pressure, the benefits gained from the use of social media must still be weighed against the potential risks. The risks include, but are not limited to, potential liability the following:

- the violation of users’ First Amendment rights, as described below;
- the allowance of posts/comments that are obscene, threatening, defamatory, etc., as described below; and
- the violation of the Open Meeting Law, as described in Section 12 of the Model Policy.

At best, social media is another component of a municipality’s marketing, customer service, and public outreach efforts.

## Do Your Homework!

Before adopting a Social Media Policy, each municipality should do the following three things:

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

Before adopting a social media policy, you should consider the following:

- *What do you want to accomplish?*
- *Is social media the appropriate tool to accomplish your goals?*
- *What are the benefits of social media and what are 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 of using social media with its associated risks may result in the realization that a traditional website will satisfy the same goals and objectives.

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 with regard to public meetings, hearings, and legal proceedings under Vermont law.

### **2. Decide which (if any) of the municipality's social media platforms will allow for public comment / public participation.**

The simplest course of action is for a municipality to use its social media platforms as means for one-way communication from the government to the public. On these types of platforms, there is no need for municipal officials to moderate, respond to, or manage public comment. A municipality may disable or disallow public comment on social media platforms and make it clear that they are reserved for government speech only (to allow municipal officials to post notices and information).

If a municipality decides to open any of its social media platforms to public comment, then the municipality must designate someone to moderate the comments to ensure that they are not profane, obscene, threatening, sexual, defamatory, encourage illegal activity, etc. A

municipality could be liable if it allowed these types of comments to remain and a harm resulted. In addition, 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 comment on its social media platform, it cannot edit or remove a comment merely because it is critical of the municipality or a municipal official. To ensure a municipality is moderating user comments 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.” This Model Policy contains a section that allows for just such identification.

A “limited public forum” allows discussion of certain topics; user comments must be related or they are subject to removal. One example is a municipality’s Facebook page that has been enabled to allow users to post comments and replies to municipal posts.

Conversely, a “government speech forum” is available only for the municipality to convey information. Public user comments are disabled on government speech forums. 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, identify its purpose, and moderate posts and comments accordingly will result in an increased risk of violating users’ First Amendment rights. If a municipality has designated a social media platform as a limited public forum but fails to consistently moderate user comments as such, the platform may become a de facto traditional (unrestricted) public forum, further restricting the municipality’s ability to limit or remove content.

**3. Make sure there are no legal inconsistencies.** Prior to adoption by the municipal legislative body, the policy should also 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 contracts.

## You Must Customize this Model

This model policy must be customized to suit the particular needs of your municipality, giving careful consideration to each element in light of your community’s resources and expectations. **Opportunities for editing this policy are marked with bracketed italicized text:** “[*insert text*].”

**This model policy has been developed for illustrative purposes only. VLCT makes no express or implied endorsement or recommendation of any policy, nor does it make any express or implied guarantee of legal enforceability or legal compliance, or that any policy is appropriate for any particular municipality. Each municipality is advised to seek legal counsel to review any proposed policy before adoption and / or use. VLCT PACIF members are advised to seek input from their municipality's loss control specialist regarding insurance considerations and risk avoidance.**

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## Social Media Policy

[insert Town/City/Village] of \_\_\_\_\_, Vermont

### Section 1: Title and Authority

This policy shall be known as the [insert Town/City/Village] of \_\_\_\_\_ Social Media Policy (hereafter "Policy"). It has been adopted by the [insert Town/City/Village] of \_\_\_\_\_ [insert Selectboard/Council/Trustees/Etc.] pursuant to 24 V.S.A. §§ 1121, 1122, and 872.

The [insert Selectboard/Council/Trustees/Etc.] reserves the right to amend any of the provisions of this Policy for any reason and at any time, with or without notice.

This policy is administered by the [insert municipal Manager/ Selectboard/Council/Trustees/Etc.] or [his/her/its] authorized representative or designee.

### Section 2: Purpose.

The purpose of this Policy is to provide standards and procedures for the appropriate use of municipal social media platforms. This Policy gives direction to municipal employees, elected officials, volunteers, appointees, public bodies and other authorized users of the municipality's electronic/computer resources to access and engage in social media platforms for municipal purposes. This Policy also creates guidelines for any public user who accesses or comments on the municipality's social media platforms.

While this Policy generally applies to the most popular platforms, such as Facebook, YouTube, Instagram, Snapchat, and Twitter, it is acknowledged that social media is an evolving communications tool and that new platforms may become available over time. The municipality may utilize social media platforms to communicate information related to the business of the municipality directly to the public as well as to provide members of the public the opportunity to comment on or participate in discussions concerning municipal business, including but not limited to operations and services provided by the municipality. The municipality encourages the use of social media to further the goals of the municipality, the missions of its departments and public bodies, and to contribute to the overall vibrancy of its community and degree of participation by its citizenry, where appropriate.

The municipality has an overriding interest and expectation in deciding what is published on behalf of the municipality through social media and in establishing guidelines for the use of municipal social media by municipal officials and the public.

### Section 3: Definitions.

The following definitions shall apply to this Policy:

**Comment** means a statement, post, image, remark, or response submitted by a municipal official or member of the public to the municipality's social media platform(s), including hyperlinks (links) and any medium of content.

**Designated Agent** means an individual designated by the [*insert Selectboard/Council/Trustees/Etc.*] to receive and respond to notifications of claimed copyright infringement. Once named, the municipality must file a "designation of agent" form with the United States Copyright Office.

**Municipal Electronic Equipment** means all municipal electronic equipment including computers, cell phones, smart phones, pagers, any associated hardware or software, and any other municipal equipment that may be utilized to send or receive electronic communications.

**Municipal Official** means employees of the municipality, elected or appointed officials, and municipal volunteers.

**Municipal Social Media** or **Municipal Social Media Platform** means the official social media platform(s) of the municipality.

**Municipal Social Media Moderator** means an individual designated by the [*insert municipal Manager/ Selectboard/Council/Trustees/Etc.*] to monitor, manage, and oversee municipal social media comments and content.

**Municipal Website** or **Official Municipal Website** means the official website/domain of the municipality, [*insert web address*].

**Social Media Platform** or **Social Media** means the various forms of information-sharing technology to create online content and dialogue around a specific issue or area of interest. Examples of social media applications include but are not limited to Facebook, MySpace, Google and Yahoo Groups, Wikipedia, YouTube, Instagram, Snapchat, Flickr, Twitter, LinkedIn, and news media comment-sharing/blogging.

**User** means a member of the general public who accesses, comments, or posts content to municipal social media platforms.

## Section 4: Conduct of Municipal Officials

Those designated and authorized to utilize municipal social media platforms do so with the understanding that they are representing the municipality via social media outlets and must conduct themselves at all times as representatives of the municipality. Municipal officials' use of municipal social media platforms shall comply with this Policy, the municipality's personnel and any other relevant policies, charter provisions, rules, and regulations of the municipality. This includes any usage of municipal social media platforms from outside of the workplace.

When a municipal official responds to a comment in his/her capacity as a municipal official, the official's name and title should be made available.

Information posted to municipal social media platforms is public information, and all comments and posts by municipal officials are subject to Vermont's Public Records Law, Open Meetings Law, and all other applicable laws, rules, policies, municipal charter provisions and regulations. Municipal officials should have no expectation of privacy regarding the information posted on municipal social media platforms nor in anything created, sent or received on municipal electronic equipment. The municipality may monitor any and all transactions, communications and transmissions to ensure compliance with this Policy and to evaluate the use of its equipment.

When conducting municipal business, municipal officials are expressly prohibited from disclosing any information via comments or posts to municipal social media platforms that may be confidential.

Municipal officials are discouraged from using personal accounts to comment on or post municipal information to municipal social media platforms, or to post information regarding official municipal business on other non-municipal social media platforms.

It is the responsibility of authorized municipal officials to ensure that information communicated by means of social media is accurate and up-to-date.

The Municipal Social Media Moderator will monitor the content posted by municipal officials and the public on each of the municipality's social media platforms to ensure it complies with this Policy for appropriate use, messaging and branding, consistent with the goals of the municipality.

All authorized municipal officials must be provided with a copy of this Policy and sign the Acknowledgement of Official Use by Municipal Officials (see Addendum A) prior to utilizing municipal social media.

## Section 5: Designation of Social Media Platforms

For each of the municipality's social media platforms, the *[insert Selectboard/Council/Trustees/Etc.]* has identified and designated the type of speech forum, and its purpose and rules, as follows:

### 1. **Government Speech Forums.**

The following social media platforms are hereby designated as Government Speech Forums:

*[insert list of applicable social media platforms such as "the official Town Website, <https://www.Townofsmithsvillevt.gov>; the official Town Twitter account, <https://www.twitter.com/Townofsmithsvillevt>; etc.]*

These platforms do not allow for any public comments whatsoever. They are reserved for the municipal government to engage in its own expressive conduct to promote its own message.

### 2. **Limited Public Forums.**

The following social media platforms are hereby designated as Limited Public Forums:

*[insert list of applicable social media platforms such as: "The official Town Facebook page, <https://www.facebook.com/Townofsmithsvillevt>, The official Town Instagram page, <https://www.instagram.com/Townofsmithsvillevt>, etc.]*

These platforms are places where public comment has been enabled to allow for discussion on specific topics as signified by postings by authorized municipal officials or consistent with the purposes of this policy. Submission of comments by members of the public constitutes participation in a limited public forum.

## Section 6: User Comments: Rules and Guidelines

This Section applies to users who access or comment on the municipal social media platforms. The rules and guidelines in this Section apply to all municipal social media platforms. This section's provisions governing user comments on municipal social media platforms shall be displayed on all municipal social media platforms or made available by hyperlink from the municipality's official website. Users shall be informed that agreement to its terms is a prerequisite to participating in the municipality's social media platforms.

On every platform that has been designated in Section 5 of this Policy as a "Limited Public Forum," the *[insert Town/City/Village]* is interested in hearing the opinions of the public. Vigorous, constructive conversations are encouraged within comments, messages, retweets, and other user communications. The *[insert Town/City/Village]* does not discriminate based on viewpoint, but may remove comments



and restrict access to users for violating this Policy. The [insert Town/City/Village] reviews comments on all its limited public forum social media platforms.

All users must clearly identify themselves; anonymous posting shall not be allowed. A comment posted by a member of the public on any municipal social media platform is the opinion of the commentator or poster only, and publication of a comment does not imply endorsement of, or agreement by, the [insert Town/City/Village], nor do such comments necessarily reflect the opinions or policies of the [insert Town/City/Village]. The [insert Town/City/Village] does not guarantee the authenticity, accuracy, appropriateness, or security of posted hyperlinks, websites, or content linked thereto.

Comments by authorized municipal officials shall be allowed on municipal social media platforms only when consistent with the provisions of this policy. Comments by the general public shall be allowed on limited public social media platforms only when consistent with the provisions of this policy. Comments containing, constituting, or linking to any of the following inappropriate forms of content shall not be permitted on any type of municipal social media platform and are subject to editing, removal or restriction, in whole or in part, by the Municipal Social Media Moderator:

- Profane, obscene, or sexual language;
- Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability, or sexual orientation;
- Solicitations of commerce, including but not limited to advertising of any business or product for sale;
- Disruptively repetitive content;
- Conduct or encouragement of illegal activity;
- Information that may tend to compromise the safety or security of the public or public systems;
- Malicious or harmful software or malware;
- Defamatory or personal attacks;
- Threats of violence or to public safety;
- Confidential, private, or exempt information or records as defined by State law
- Conduct that violates any federal, state, or local law;
- Copyrighted materials in violation of State or federal law; or
- Comments that are clearly unrelated to the subject matter of any post made on the platform by or on behalf of the [insert Town/City/Village].

The [insert Town/City/Village] reserves the right to deny any user who violates this Policy access to posting to municipal social media platforms. Users may be temporarily or permanently restricted from accessing municipal social media platforms if they violate this Policy. To contest the restriction of access to a social media platform, the user must submit a written statement providing grounds for

reinstatement to the Municipal Social Media Moderator. Requests will be responded to on a reasonably timely basis, and access will be restored if it is determined that the grounds for reinstatement are sufficient. A statement that the user will abide by this Policy in the future may typically be sufficient.

Users may contact the Municipal Social Media Moderator at any time to identify comments or other conduct on the municipal social media platforms in violation of this Policy. Users should avoid and ignore responding to a comment in violation of this Policy, or if responding, do so in conformance with this Policy.

All comments posted to any municipal social media platform are bound by that platform's applicable statement of rights and responsibilities or terms of service. The *[insert Town/City/Village]* reserves the right to report any violation of that platform or site's statement of rights and responsibilities or terms of service to the platform or site's provider with the intent of the provider taking appropriate and reasonable responsive action.

## **Section 7: Account Management**

Municipal officials may only establish or use municipal social media platforms on behalf of the municipality after approval by the *[insert municipal Manager/ Selectboard/Council//Trustees/Etc.]* or *[insert his/her/its]* authorized representative. The *[insert municipal Manager/ Selectboard/Council/Trustees/Etc.]* or *[his/her/its]* authorized representative or designee will review all requests by municipal officials to contribute to municipal social media platforms and has the sole authority to authorize their use and establish and/or terminate municipal social media accounts. In this role, the *[municipal Manager/ Selectboard/Council/Trustees/Etc.]* or *[his/her/its]* authorized representative will evaluate all requests for usage, verify staff authorized to use municipal social media tools, and confirm completion of online training for social media if deemed necessary. The *[municipal Manager/ Selectboard/Council/Trustees/Etc.]* or *[his/her/its]* authorized representative will also be responsible for maintaining a list of all social media platforms in use, the names of all administrators of these accounts, as well as the associated usernames and active passwords.

All municipal social media platforms shall be created by a duly designated Municipal Information Technology (IT) officer with the approval and under the direction of the *[municipal Manager/ Selectboard/Council/Trustees/Etc.]* or *[his/her/its]*, and shall be published using approved municipal social networking platform and tools and administered by the Municipal IT officer.

## **Section 8: Municipal Social Media Moderator**

The *[municipal Manager/ Selectboard/Council/Trustees/Etc.]* or *[his/her/its]* authorized representative shall designate a Municipal Social Media Moderator to monitor, manage, and oversee all comments and

content on each social media platform to ensure adherence to this Policy, including appropriate use, messaging, and branding that is consistent with the interests, goals, and objectives of the [insert Town/City/Village].

If a comment or other content is edited or removed by the Municipal Social Media Moderator, the comment or content must be retained in accordance with the relevant records retention schedule. The edit or removal shall be accompanied by a description of the reason such comment or content was deemed not suitable for posting along with the time, date, and identity of the poster when available.

The Municipal Social Media Moderator or his/her authorized representative or designee retains the sole authority to remove information from municipal social media outlets.

Designated department heads and/or other authorized municipal officials will be responsible for the content and upkeep of any municipal social media platforms they may create.

Wherever possible, content posted by the municipality to the municipality's social media platforms will also be available on the municipality's official website. Municipal social media platforms should complement rather than replace the municipality's existing website resources. Content posted on the municipality's social media platforms should contain links directing users to the municipal's official website for additional information, forms, documents, or online services necessary to conduct business with the [insert Town/City/Village].

All municipal social media platforms shall clearly indicate that they are maintained by the [insert Town/City/Village] and shall prominently display necessary contact information. All municipal social media platforms shall include the prominent placement of the official municipal seal, if available, along with the following notification:

*This is the official [insert Facebook, Twitter, YouTube, etc.] platform for the [insert Town/City/Village] of \_\_\_\_\_, Vermont. If you are looking for more information about the [insert Town/City/Village] of \_\_\_\_\_, Vermont please visit the [insert Town/City/Village]'s official website: [insert URL address of municipal website]. The purpose of this platform is to provide general public information only. Should you require a response from the [insert Town/City/Village] or wish to request municipal services, you must go to [insert URL address of municipal website], if appropriate, or contact the [insert Town/City/Village] at [insert office phone number and/or email address].*

## **Section 9: Copyright Infringement Notification**

The [insert Town/City/Village] complies with the provisions of the Digital Millennium Copyright Act of 1998 (DMCA). Federal law (U.S. Copyright Act, Title 17 of the US Code, and, more recently, the Digital

Millennium Copyright Act, 105 PL 304) makes it illegal to download, upload, or distribute in any fashion copyrighted material in any form without permission or a license to do so from the copyright holder.

The [insert Town/City/Village] respects the intellectual property of others and requests users of the municipal social media platforms to do the same. In accordance with the DMCA and other applicable law, the [insert Town/City/Village] may remove comments or posts to the municipal social media platforms that are copyrighted, and to deny access to the municipal social media platforms users who are deemed to be copyright infringers pursuant to this Policy.

The following notification shall be made accessible on all municipal social media platforms and on the [insert Town/City/Village]'s official website:

*If you believe that any material on the [insert Town/City/Village]'s official website or municipal social media platforms infringes on any copyright which you own or control, or that any link on municipal social media platforms directs users to another website that contains material that infringes on any copyright that you own or control, you may file a notification of such infringement with the [insert Town/City/Village]'s Designated Agent as set forth below. Notifications of claimed copyright infringement must be sent to the [insert Town/City/Village] of \_\_\_\_\_, Vermont's Designated Agent, for notice of claims of copyright infringement. The [insert Town/City/Village] of \_\_\_\_\_, Vermont's Designated Agent may be reached as follows:*

*Designated Agent:*

*Address of Designated Agent:*

*Telephone Number of Designated Agent:*

*Email Address of Designated Agent:*

## Section 10: Public Records Law – Compliance

Municipal social media platforms and their related content are subject to Vermont's Access to Public Records Law. Records that are produced or acquired in the course of municipal business, including material posted to municipal social media platforms, may be a public record and therefore, there should be no expectation of privacy in regards to the information posted on municipal social media platforms. Public records, regardless of format, are available for inspection and copying during customary business hours unless there is a specific statute exempting the record from public disclosure. Those records exempt from public inspection and copying are set out at 1 V.S.A. § 317(c).

The official municipal website and municipal social media platforms shall clearly indicate that any content or comments posted or submitted for posting in whatever format are subject to public

disclosure. Content related to municipal business shall be maintained in an accessible format so that it can be produced in response to a public records request. Users shall be notified that public disclosure requests must be directed to the proper custodian of public records. The name, title, and contact information for the proper custodian of public records shall be posted on each municipal social media platform.

## Section 11: Public Records Law – Retention

Relevant records retention schedules apply to content on the official municipal website as well as to municipal social media platforms. Content posted or submitted for posting shall be retained pursuant to Vermont’s Public Records Law in its standard format and in accordance with applicable disposition orders and retention schedules as established by the Vermont State Archivist.

## Section 12: Open Meeting Law – Compliance

All posts by members of the municipality’s public bodies that relate to municipal business are subject to Vermont’s Open Meetings Law. Members (elected or appointed) of any municipal public body should refrain from using municipal social media platforms to discuss the business of the public body or take action by the public body in violation of Vermont’s Open Meeting Law. Furthermore, members of public bodies should refrain from commenting on or responding to inquiries related to quasi-judicial matters within the subject matter jurisdiction of their respective public bodies.

Members of municipal public bodies may utilize municipal social media for gathering public input and fostering of public discussion related to the role with which the public body has been charged by statute or the *[insert Selectboard/Council/Village Trustees/Etc.]*, provided that the use is authorized in accordance with and conforms to this Policy.

Information posted by the *[insert Town/City/Village]* on its social media platforms will supplement and not replace required notices and standard methods of providing warnings, postings, and notifications required to be made with regard to public meetings and hearings under Vermont law.

## Section 13 – Enforcement against Municipal Officials

Employees found in violation of this Policy may be subject to disciplinary action, up to and including termination of employment in compliance with the *[insert Town/City/Village]*’s personnel Policy, employment contract, or collective bargaining agreement as appropriate.

Appointees and volunteers found in violation of this Policy may be subject to removal from their respected public posts.<sup>1</sup>

Elected officials found in violation of this Policy may be subject to private or public admonishment and/or may be asked to resign their office.<sup>2</sup>

**ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.**

**SIGNATURES of *[insert Selectboard/Council/Trustees/Etc.]*:**

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<sup>1</sup> Certain appointed public officers such as a Zoning Administrator and members of the Zoning Board of Adjustment or Development Review Board may only be removed for cause and after being afforded with procedural due process protections including notice and a reasonable opportunity to be heard.

<sup>2</sup> Unless there is a local ordinance or charter provision that states otherwise, such a request shall not be considered an order for the elected official to resign.

Addendum A: Acknowledgement of Official Use by Municipal Officials

I, \_\_\_\_\_, acknowledge that:

- A. I received a copy of the Social Media Policy of the [insert Town/City/Village] of \_\_\_\_\_, Vermont on \_\_\_\_\_ (Date);
- B. I have been given an opportunity to ask questions about said Policy and I have been provided with satisfactory information in response to my questions;
- C. I understand the language used in this Policy;
- D. I acknowledge that the [insert Town/City/Village] reserves the right to add, amend or discontinue any of the provisions of this Policy for any reason or none at all, in whole or in part, at any time, with or without notice;
- E. I acknowledge that I understand this Policy and I agree that I will comply with all of its provisions.

\_\_\_\_\_

*Municipal Official's Signature*

\_\_\_\_\_

*Date*