

ADMINISTRATIVE POLICY 3-27 SOCIAL MEDIA POLICY

I. INTRODUCTION

Courts classify social media platforms as powerful “high risk” broadcasting and publishing platforms that are vulnerable to intrusions from unauthorized users; this especially applies to work-related data on private social media accounts. Social Media networks have an inherent viral capability that can expose a user’s content to large audiences worldwide and create a permanent public record of that data. This means that your social media content could be retrieved in perpetuity by other third parties that have a significant impact on your life.

The U.S. Supreme Court has ruled that social media is the “modern public square.” Therefore, users who decide to share personal information on social media networks knew or should have known that their information is at risk of being hacked and being viewed by unauthorized users. Further, social media networks do not enjoy automatic immunity to civil and criminal liability. Illegal and offensive social media content is governed by all applicable civil and criminal laws. Due to the amplification power of social media, users could be exposed to larger legal damages than off-line liability.

Finally, there is the possibility that an employee can be sued for social media mishaps if offensive social media content could be judged to be willful, not mere negligence. You would need to check your policy terms and exclusions (i.e., scope of the intentional act exception, breach of contract you signed with social media platforms not to violate their “Community Standards” and other network rules).

II. APPLICABILITY

This Policy applies to all City employees, City volunteers, and any other third parties doing business with the City.

III. PURPOSE

The City of Lawton (referred to as “City” herein) uses social media broadcasting platforms to further amplify the City’s mission statement to enhance services and quality of life for the public.

City employees should know that public employment means there are certain limitations on freedom of speech. Government employers enjoy considerable discretion to manage their operations and the First Amendment does not give employees a platform to express their personal views. This social media policy is rooted in legal standards created by local, state, and federal law, not subjectivity or arbitrary decision-making.

The U.S. Supreme Court and lower courts classify social media as a “high liability” medium that can reach millions and leaves a permanent digital footprint. Therefore, as a social media

broadcaster, you have a higher duty of care when you broadcast or publish content on social media platforms, especially regarding City business.

It is the intent of this policy to put all City employees and other third parties doing business with the City, on notice that social media is not a lawless electronic platform. Your work-related content must adhere to local, state, federal, and administrative laws, especially regarding speech and privacy.

Additionally, in drafting this policy, it is the intent of the City to avoid vague or overbroad language. This especially holds true with reference to First Amendment speech, privacy, and copyright issues. The policy is based on the precise policy language used in U.S. Supreme Court and federal court rulings, federal and state statutes, local laws, and administrative rules. The policy intends to strike a balance between an employee's right to speak as a citizen on issues of public concern and the City's right to avoid actual harm that meaningfully impairs the efficiency of the City's operations and services.

IV. DEFINITIONS

1. **City User:** An employee or other third-party doing business with the City who uses social media or other digital media driven platforms.
2. **Approval of Social Media Sites:** All social media sites that claim to represent the City shall be approved by authorized City personnel only.
3. **Web Developer/Social Media Coordinator:** An authorized City representative who is responsible for designing City websites, social media, content, and other digital media platforms.
4. **Help Desk:** A Help Desk is a resource intended to provide the customer or end user with information and support related to an institution's product and or services.
5. **Terms of Service:** Rules designed by a social media company to govern the development and transmission of content. (i.e., Found in Facebook, Twitter)
6. **Approved Social Media Content:** An authorized person from the City has given permission for employees or other third parties to develop content that represents the City.
7. **Blocking and Deleting Content:** All determinations to delete or block content on an officially sponsored City digital social media or other electronic platform are made by an authorized City official and adhere to all local, state, and federal laws.
8. **Spam:** The abuse of electronic messaging systems (including most broadcast media, digital delivery system) to send unsolicited bulk messages indiscriminately. While the most widely recognized form of spam is email spam, the term is applied to similar abuses in other digital media.

V. GENERAL RULES AND ASSUMPTIONS

1. Assume that all posts, tweets, and other electronic content that relate to City business, or your employment duties are going to be read by citizens in a public record request, litigants in a lawsuit, and an unauthorized person in a hacking incident. This assumption applies notwithstanding if the social media content originated from your private or workplace account.
2. It is the express desire of the City to stay out of your personal lives regarding non-work-related content on personal devices. However, when you integrate personal comments with work-related content on work equipment or personal devices, your personal comments can be exposed in a public records request, discovery requests in a lawsuit, and hacking incidents. Therefore, you assume the risk of comingling personal comments with work-related data on your work electronic equipment, or private social media accounts and personal devices.
3. All local, state, and federal privacy rights apply to social media usage. The City does not grant you expansive or exclusive privacy rights on City sponsored or non-sponsored social media platforms. Failure to follow state and federal privacy laws on social media can expose you to professional and personal liability under 42 U.S.C. 1983 and other laws.
4. All employees and other third-party doing business with the City must receive written authorization from a designated City official prior to creating, editing, deleting, or materially making changes on City-sponsored social media pages from your work or personal devices.
5. You should be aware that if you are using your personal devices for work-related tasks, public record content on those devices could be requested in a public records request or a discovery request in litigation. All work-related tasks should be completed through the City-provided communication app that is free to download to your work or personal device.
6. No City employee can arbitrarily delete, block, or unsubscribe certain names and other contact information from the City of Lawton's social media accounts without official authorization from the City. The unauthorized deletion of public records and blocking third parties from the City of Lawton's social media accounts may result in legal liability, personal liability, and evidentiary spoliation claims (destruction of evidence in a lawsuit) which may jeopardize your ability, and the City's ability to defend itself properly in legal proceedings.
7. Upon separation of employment, termination, resignation, retirement, or other cessation of any affiliation with the City, you agree to provide all work-related content on work devices to a City official for a determination as to what content must be preserved according to state and federal public record laws.
8. The City retains copyright ownership to all City created logos, photographs, video, and other social media content. The fact that City owned content is created on an employee's personal social media account or device does not change the copyright ownership. No employee, volunteer, City vendor or any other third party is allowed to use City created logos, photographs, artwork, video, City-created work product and other City copyrighted communications without the express written consent of the City.

VI. PROHIBITED SPEECH AND CONDUCT

1. The City adheres to U.S. Supreme Court and lower court rulings on First Amendment, and the City only restrains speech that is determined to impair the efficiency of the City's operations and has a real, not conjectural, adverse impact on the City. Both federal and state courts have previously held that several types of speech may not be protected by the First Amendment, these include:

- Speech that is lewd and obscene
- Profanity
- Libel
- 'Fighting words,' or speech that incites violence
- True threats
- Fraudulent speech

2. Here are some more examples of speech that is not covered under the First Amendment:

- Speech that is categorized as workplace grievances or internal speech and does not qualify as of "of public concern" according to the definition stated in the U.S. Supreme Court's public sector First Amendment rulings
- Speech that is libelous or slanderous (i.e. defamatory video, pictures, words, hashtags, memes that may be considered libel by implication)
- Speech that is harassing (creates a hostile environment, cyberharassment, cyberstalking)
- discriminatory based on race, gender, religion, national origin, sexual orientation, disability, and age

3. City employees and other third parties doing business with the City should be aware that harassing statements on social media are viewed as inherently severe (you're potentially reaching millions of people) and pervasive (the comments are permanent digital footprints on digital landscape). Additionally, these statements can result in both civil and criminal penalties.

4. Speech that is obscene which generally requires that: a) the average person, in contemporary community standards, would find that the speech taken, as a whole, appeals to the prurient interest; b) the speech depicts or describes in an offensive way sexual conduct or excretory functions specifically defined by applicable law and c) whether the speech, taken as a whole lacks serious literary, artistic, political, or scientific value.

5. Speech that constitutes fighting words that present an imminent harm.

6. Speech that constitutes true threats.

7. Speech that is classified as extortion.

8. Speech that violates Oklahoma and federal privacy laws.

9. Speech that constitutes cyberstalking: Cyberstalking is using text-messaging, emails, or other online means of communication in a way that causes the victims to reasonably feel frightened for their safety or the safety of their family or housemates. Defendants can be convicted of violating Federal Cyberstalking.
10. Speech in violation of any copyright, trademark, or trade secret, federal or Oklahoma law.
11. Blocking First Amendment speech on Social Media platforms.
12. Any other speech not considered First Amendment speech under U.S. Supreme Court rulings, lower court ruling, and state laws.
13. Violations of The Terms Of Service on a specific social media platform regarding speech.

VII. CITY ACTIONS AND DISCIPLINE

1. This Policy will be enforced by the City. This social media policy does not create a separate disciplinary and termination system. Violations of this Policy are subject to pre-existing City discipline and termination procedures as codified by the City personnel rules.
2. The City does not allow any advertising that promotes the sale of any City product or services without written authorization from a designated City official. Without official written authorization, the City does not endorse, sponsor, or approve any online lottery, contest, video or online game, app, blog, third party influencers, or any other commercial enterprise or person that offers prizes or benefits. The City must approve any solicitation of funds on their sponsored social media sites for non-municipal purposes. This includes, but is not limited to promoting a specific product, endorsement of a political candidate, religion, race, national origin, sex, age, or any other group that is for non-municipal purposes.
3. All City-sponsored social media accounts and content represent the speech, opinions, and viewpoints of the City. Accordingly, the City shall exercise editorial control over City content posted on social media and other digital platforms as authorized by the government speech doctrine and other state and federal laws. The government speech doctrine preference and protection are separate from speech protections afforded by the First Amendment.
4. You must immediately report possible violations of this policy and unauthorized speech to avoid liability exposure to yourself and the City.
5. Failure to comply with this policy or any portion thereof by the City shall not create any expectation or interest in any private, public, or other right of action against the City, its City Council members, other elected or appointed officials, and employees.
6. By posting information, content, or any expressions to any City sponsored sites, applications, or web services, the City does not waive any legal right, protection, privilege, or immunity, including but not limited to, copyright, trademark, and/or sovereign immunity, and the City retains

all rights to such information, content, or any expressions to the fullest extent permissible under federal and state law.

VII. MISCELLANEOUS ISSUES

1. Social Media and related apps have made it easier and affordable for the average person to engage in audio and video recording. Along with this accessibility comes ethical responsibility and an awareness of state recording laws.

2. All employees and other third parties doing business with the City need to clearly understand that as more sophisticated social media platforms such as live streaming, wearable technology, Internet of Things, and other portable recording devices emerge, you have a higher duty of care to be familiar with Oklahoma and federal recording laws.

3. You shall not republish posts, tweets (retweet), or forward any prohibited or unprotected communications except for reporting the content in question to an authorized City official. The unauthorized forwarding of any City communication to a third party can expose you and the City to professional and personal liability under Oklahoma and federal law (i.e., receiving libelous content and then making material edits to the content before forwarding or re-tweeting it could expose you to republication liability).

4. Oklahoma Recording Law, One Party Consent: You are legally allowed to record a conversation if you are a contributor, or with prior consent from one of the involved parties, barring any criminal intentions.

5. City social media accounts and other officially sponsored websites and digital platforms may unknowingly contain third party links, shortcuts, applications, and other items that can be hacked and redirect unauthorized sites that can view or steal your data and expose you to malicious content. You should notify the City immediately if you encounter this problem.

6. The City does not delete or block messages in an arbitrary manner. The City does not use blocking or deleting in a discriminatory manner or as punishment for political beliefs, viewpoints on certain issues, and criticizing City employees and City Council members or City appointed officials.

7. If you would like to create social media accounts in addition to existing City social media accounts, then request permission for the same.

8. Individual departments desiring to establish their own City Social Media Accounts must obtain approval from an authorized City official.


9. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Policy is declared unconstitutional by valid final judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part of this policy. Should this policy conflict with the City charter or any City ordinances or parts thereof, then those provisions shall apply, but only to the extent that it does not conflict with pre-existing City ordinances or City charter.

10. The City disclaims all liability and shall not be responsible for any effect, injury, damage, claim, action, or demand to the fullest extent permissible under law relating to or arising from a post or submission to a social media site, application, or other external web service by any member of the public, the City's removal of or failure to remove a post or submission by a member of the public, the City's failure to follow or enforce this policy in every circumstance, or any other matter related to this policy. The City further disclaims all liability and shall not be responsible for third party content or expression on official City social media and digital media platforms that violate this policy, local, state, and federal law.

REFERENCES: N/A

RESPONSIBLE DEPARTMENT: City Manager

RECISSION: This policy supersedes Administrative Policy 3-27 dated March 31, 2021 and will remain in effect until rescinded.



MICHAEL CLEGHORN
CITY MANAGER

DATE 12/16/2022