

**CITY OF BLUE RIDGE
RESOLUTION NO. 2021-0504-001**

**A RESOLUTION OF THE CITY OF BLUE RIDGE, TEXAS
FINDING THAT TEXAS-NEW MEXICO POWER
COMPANY'S APPLICATION FOR APPROVAL TO AMEND
ITS DISTRIBUTION COST RECOVERY FACTOR TO
INCREASE DISTRIBUTION RATES WITHIN THE CITY
SHOULD BE DENIED; AUTHORIZING PARTICIPATION
WITH TNMP CITIES; AUTHORIZING THE HIRING OF
LEGAL COUNSEL AND CONSULTING SERVICES; FINDING
THAT THE CITY'S REASONABLE RATE CASE EXPENSES
SHALL BE REIMBURSED BY THE COMPANY; FINDING
THAT THE MEETING AT WHICH THIS RESOLUTION IS
PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW;
REQUIRING NOTICE OF THIS RESOLUTION TO THE
COMPANY AND LEGAL COUNSEL.**

WHEREAS, the City of Blue Ridge, Texas ("City") is an electric utility customer of Texas-New Mexico Power Company ("TNMP" or "Company") with an interest in the rates and charges of TNMP; and

WHEREAS, the Cities Served by Texas-New Mexico Power Company ("TNMP Cities") is a coalition of similarly situated cities served by TNMP that have joined together to efficiently and cost effectively review and respond to electric issues affecting rates charged in TNMP's service area in matters before the Public Utility Commission ("Commission") and the courts; and

WHEREAS, on or about April 5, 2021, TNMP filed with the Commission an Application for Approval to Amend its Distribution Cost Recovery Factor ("DCRF"), Commission Docket No. 51959, seeking to increase distribution rates by \$13,959,505 million annually ; and

WHEREAS, the City of Blue Ridge will cooperate with TNMP Cities in coordinating their review of TNMP's DCRF filing with designated attorneys and consultants, prepare a common response, negotiate with the Company, and direct any necessary litigation, to resolve issues in the Company's filing; and

WHEREAS, all electric utility customers residing in the City will be impacted by this ratemaking proceeding if TNMP's Application is granted; and

WHEREAS, working with the TNMP Cities to review the rates charged by TNMP allows members to accomplish more collectively than each city could do acting alone; and

WHEREAS, TNMP Cities' members and attorneys recommend that members who have retained original jurisdiction over electric utility rates deny TNMP's DCRF.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BLUE RIDGE, TEXAS:

SECTION 1. That the City is authorized to participate with TNMP Cities in Commission Docket No. 51959.

SECTION 2. That, subject to the right to terminate employment at any time, the City of Blue Ridge hereby authorizes the hiring of the law firm of Lloyd Gosselink Rochelle & Townsend, P.C. and consultants to negotiate with the Company, make recommendations to the City regarding reasonable rates, and to direct any necessary administrative proceedings or court litigation associated with an appeal TNMP's DCRF application.

SECTION 3. That the rates proposed by TNMP to be recovered through its DCRF charged to customers located within the City limits should be denied.

SECTION 4. That the Company should continue to charge its existing rates to customers within the City.

SECTION 5. That the City's reasonable rate case expenses shall be reimbursed in full by TNMP within 30 days of the adoption of this Resolution, and within 30 days of presenting monthly bills to TNMP thereafter.

SECTION 6. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

SECTION 7. That a copy of this Resolution shall be sent to Scott Seamster, Associate General Counsel, Texas-New Mexico Power Company, 577 N. Garden Ridge Blvd., Lewisville, Texas 75067, and to Thomas Brocato, General Counsel to TNMP Cities, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, TX 78767-1725, or tbrocato@lglawfirm.com.

PASSED, APPROVED AND ADOPTED on this 4th day of May, 2021.

Rhonda Williams, Mayor

ATTEST:

Eddie Sims, City Secretary

Mr. Brocato's Direct Line: (512) 322-5890
Email: tbrocato@lglawfirm.com

MEMORANDUM

TO: Cities Served by TNMP ("TNMP Cities")
FROM: Thomas Brocato
Jamie Mauldin
DATE: April 7, 2021
RE: TNMP– Distribution Cost Recovery Factor ("DCRF") filing

CONFIDENTIAL/ATTORNEY-CLIENT COMMUNICATION
CITY ACTION REQUIRED NO LATER THAN JUNE 4, 2021

On April 5, 2021, Texas-New Mexico Power Company ("TNMP" or "Company") filed an Application for Approval to Amend its Distribution Cost Recovery Factor. In the filing, the Company is seeking an increase in distribution revenues of \$13,959,505.

TNMP Cities has engaged the services of a consultant, Mr. Karl Nalepa, to review the Company's filing. Mr. Nalepa will review the filing and identify adjustments that should be made to the Company's request. We are recommending that Cities deny the requested relief.

The Public Utility Commission of Texas's rules allow cities 60 days to act on this application. That deadline is June 4, 2021. **Accordingly, we request that each city schedule the draft resolution attached to this memorandum for consideration at their next council meeting.**

If you have any concerns or question please do not hesitate to contact me at (512) 322-5857, or tbrocato@lglawfirm.com. We appreciate your continued support.

MODEL STAFF REPORT REGARDING TNMP'S DISTRIBUTION COST RECOVERY FACTOR FILING

On April 5, 2021, Texas-New Mexico Power Company ("TNMP" or "Company") filed an Application for Approval to Amend its Distribution Cost Recovery Factor ("DCRF") to Increase Distribution Rates with each of the cities in their service area. In the filing, the Company asserts that it is seeking an increase in distribution revenues of \$13,959,505.

The resolution authorizes the City to join with the Cities Served by TNMP ("TNMP Cities") to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

Purpose of the Resolution:

The purpose of the Resolution is to deny the DCRF application proposed by TNMP.

Explanation of "Be It Resolved" Paragraphs:

1. This section authorizes the City to participate with TNMP Cities as a party in the Company's DCRF filing, PUC Docket No. 51959.
2. This section authorizes the hiring of Lloyd Gosselink and consultants to review the filing, negotiate with the Company, and make recommendations to the City regarding reasonable rates. Additionally, it authorizes TNMP Cities to direct any necessary administrative proceedings or court litigation associated with an appeal of this application filed with the PUC.
3. This paragraph finds that the Company's application is unreasonable and should be denied.
4. This section states that the Company's current rates shall not be changed.
5. The Company will reimburse Cities for their reasonable rate case expenses. Legal counsel and consultants approved by TNMP Cities will submit monthly invoices that will be forwarded to TNMP for reimbursement.
6. This section recites that the Resolution was passed at a meeting that was open to the public and that the consideration of the Resolution was properly noticed.
7. This section provides that TNMP and counsel for TNMP Cities will be notified of the City's action by sending a copy of the approved and signed Resolution to counsel.

JOB DESCRIPTION

JOB TITLE: CITY SECRETARY

REPORTS TO: MAYOR AND CITY COUNCIL

FLSA STATUS: SALARY

JOB SUMMARY:

City Secretary is appointed by the City Council. To plan, direct, manage, and oversee the activities and operations of the City Secretary's Office, including serving as liaison between the City Council and the public; to coordinate assigned activities with other City departments and outside agencies; and to provide highly responsible and complex administrative support to the Mayor, and City Council. Responsible for all paperwork pertaining to official business of the City Council, and for implementation of the City's record's management program; acts as representative of the City at various functions; assists Mayor and City Council in making operational decisions including interpretation of policy, law, Ordinances, Local Government Laws, Council guidelines, and official procedures; open records; municipal elections; records management; and all aspects of human resources. Position involves regular contact with the public in situations that affect the accomplishment of the job at hand, and requires considerable tact and diplomacy.

PRINCIPAL DUTIES AND RESPONSIBILITIES:

Provides administrative support to the Mayor, City Council and staff. Prepares and posts all legal, agenda and meeting notices, provides staff support to the City Council and Council appointed boards; prepares documentation for and recordings of official City Council minutes, ordinances, resolutions and other related business; maintains official city records and oversees records management and retention program; provides review and responds to public information requests; administers elections processes and ensures deadline requirements are met.

Prepares and presents staff reports and other necessary correspondence. Assists and communicates with staff and professional business associates. Assists the public, and employees; provides information on departmental and city policies and procedures as required; and transfers inquiries to the appropriate individual or department as necessary. Responds to and resolves difficult and sensitive citizen inquiries and complaints through established City practices and procedures. Attends City Council meetings and records all official proceedings; prepares and preserves accurate minutes and other documents; directs the publication, filing, indexing, and safekeeping of all proceedings for Council.

Certifies and executes official City documents; maintains custody of City Seal; administers and files oaths of office.

Serves as Records Management Officer for the City; manages, facilitates, and handles all technical support for Public Records; administers Records Management Program; interprets Local Government Records Act and the City's Records Management Ordinance; recommends revisions to ordinances as needed; oversees and directs all Department Records Liaisons.

Responsible for receiving all Public Information requests or Open Records Requests for the City of Blue Ridge. Respond to Open Records Requests within the time constraints established by law.

Provides information on Open Meeting Laws and compliance to city staff as well as members of the City Council, boards, and commissions.

Maintains custody of official records and archives of the City including ordinances, resolutions, contracts, judgments, agreements, surety bonds, deeds, insurance, and minutes; certifies copies as required.

Receives and files claims and/or lawsuits against the City; accepts subpoenas; records legal documents of the City.

Serves as Municipal Election Administrator, coordinates municipal elections through the County; prepares all election information for council candidates, election orders, resolutions, notices, and other pertinent documents; coordinates with the City Legal department to ensure conformance with election and government code; and receives and files all campaign financial reports; coordinates the Canvass of Election Results; arranges the swearing-in of newly elected council members and board members; updates city website with current election information, campaign forms, as well as current and historical election results, campaign finance reports, and election history.

Receives applications for elected office and verifies all required fields are fully completed. Files Statements and Oath of Elected Officials and assists board members in filing statements of appropriate offices.

Receives and processes formal petitions relating to initiatives, referendums, or recalls; examines and certifies results; receives and processes petitions relating to matters pertaining to the City.

Participates on a variety of boards and commissions; attends and participates in professional group meetings; stays abreast of new trends and innovations in the field of municipal government.

Prepares proclamations and arranges for official appearances of the Mayor or designated city representative at local and regional community events. Coordinates City Secretary's Office activities with other City departments and outside agencies and organizations. Participates in the development and administration of the City Secretary's Office budget; participates in the forecast of additional funds needed for staffing, equipment, materials, and supplies, directs the monitoring and approval of expenditures through the administrative practices and procedures of the City; participates in the preparation of and implements budgetary adjustments as necessary.

Research and planning, apply and facilitate grant programs and projects to include administration, working with a grant coordinator, facilitating contractor, keeping records throughout the grant process, closeout of the grant and auditing.

Oversee and facilitate all aspects of Human Resources. Coordinates and manages assigned programs expertise in variety of human resources activities to include benefits, benefits 3 programs, compensation, and workman's compensation/claims and risk management and maintains all City employees' personnel records. Conducts research and respond to a variety of inquiries from employees and retirees. Manages and oversees annual employees programs. Manages and oversees COBRA and FLMA administration; as well as property and casualty insurance for the City.

Participates and organizes special event planning and coordination.

Coordinates, directs and organizes the posting of all legal notices, agendas, publications, and job announcements on the City's website.

Perform other job-related duties and responsibilities as assigned.

QUALIFICATIONS AND KNOWLEDGE:

Pertinent Federal, State and Local laws, codes and regulations.

Public Information Open Records Act; election laws and procedures; Local Government Records Act, and political reform requirements. Organizational and management practices as applied to the analysis and evaluation of programs, policies and operational needs.

Knowledge of new hire orientation process, open enrollment, Flex/HRA/HSA accounts, and Worker's Compensation claims.

Office procedures, methods, and computer equipment.

Skill to:

Interpret and understand the Local Government Codes, Election Code, Code of Ordinances and other statutes of the State of Texas.

Effectively use business English, spelling, and appropriate grammar.

Work with new technology.

Ability to:

Meet deadlines in a timely manner. Provide information and organize material including records retention/destruction in compliance with laws, regulations and policies.

Identify and respond to community and City Council issues, concerns, and needs.

Interpret and explain local and state laws and regulations.

Communicate clearly and concisely, both orally and in writing.

Establish and maintain effective working relationships with those contacted in the course of work including City employees and other government officials, community groups, the general public and media representatives.

Be able to work night meetings. Work may occasionally require travel, including over-night stays, involving training and conducting City business.

Must be able to handle stressful situations.

Follow and embrace the City of Blue Ridge Core Values – Trust, Accountability, Teamwork, Pride and Service Excellence.

Good knowledge of records management operations; verbal fluency; good grammatical skills, ability to manage an office and supervise the work of others; ability to interact with City officials, city employees, and the public in a pleasant and gracious manner.

JOB DESCRIPTION

JOB TITLE: PUBLIC WORKS DIRECTOR

REPORTS TO: CITY SECRETARY AND CITY COUNCIL

FLSA STATUS: SALARY

JOB SUMMARY:

A public works director is responsible for various administrative and managerial duties. Basically, a public works director monitors and oversees the physical facilities of a local community or area. A public works director works with the City Secretary and under the supervision of the Mayor and City Council. One of the essential duties of a public works director is the ability to create and plan long-term programs that will develop the growth of a community. In addition, the public works director is also responsible for analyzing and assessing proposals of the public works staff.

A public works director is also responsible for evaluating the projects in accordance to the given budget. Aside from that, it is the responsibility of a public works director to evaluate his/her staff based on the department's requirement and criteria. Throughout the project, a public works director should always monitor the working progress of their staff and other employees. Public works director may also have an initiative in conducting performance reviews, and hiring new employees. Developing the protocol for hiring outside vendors is also one of the essential duties of a public works director. To proceed with the work, a public works director could create bid specifications and recommend specific vendors for the particular projects. It is the responsibility of the public works director to ensure that all works are completed successfully by contractors, vendors, and other public staff member.

A public works director generally works on-site. A public works director often works during regular business hours unless there are special events or major issues with public services that require to extend the working hours. A public works director also monitors the activities of various sub-departments within the public works sector. These sub-departments include:

- Maintenance (also known as "Facilities")
- Engineering
- Utilities
- Code Enforcement

PRINCIPAL DUTIES AND RESPONSIBILITIES:

- Knowledge in municipal public works such as planning, design, maintenance, and construction.
- Knowledge in municipal wastewater and water planning, design, maintenance and construction.
- Knowledge in principles of budget preparation and expenditure control.
- Knowledge in applicable Federal, State, and local laws and regulations pertaining to public works functions.
- Knowledge in Principles of Effective Management Skills.
- Ability to analyze, evaluate, and implement municipal public works programs/projects.
- Strong communication skills.
- Knowledge in safe work practices.

- Ability to plan, organize and direct the work of public works personnel.
- Ability to analyze organizational and administrative problems, recommend alternative courses of action, and provide leadership to others in implementing such actions.
- Ability to prepare and create clear and comprehensive written reports.
- Maintain strong relationships with the city officials, employees, contractors, the general public, and representatives of other agencies.
- Experience in evaluating and training staff.

JOB DESCRIPTION

JOB TITLE: ASSISTANT CITY SECRETARY

REPORTS TO: CITY SECRETARY AND CITY COUNCIL

FLSA STATUS: Non-Exempt (HOURLY) (eligible for overtime pay)

JOB SUMMARY:

- Assists with the daily operations of the City Secretary's Office
- Assists department liaisons with implementation and training related to records management
- Records official City documents with appropriate County or State Agency
- Scans documents, minutes, contracts and agreements for archiving
- Assists with maintenance of the City Secretary, Boards and Commissions and Elections webpage, Facebook and Twitter
- Responds to requests for Public Information in accordance with the Texas Public Information Act
- Responds to inquiries and complaints from residents, vendors, contractors, consultants
- Assists internal staff with requests for information
- Implements all bookkeeping measures for accounts receivable and accounts payable
- Provides data for auditor regarding City financials

GOALS:

- Ensure the delivery of quality services to citizens through effective management and efficient administration.
- Maintain fiscal accountability in all financial transactions, management of treasury operations, and regulatory compliance with the investment of public funds.
- Provide assistance and sustain the goal of greater economic growth.
- Assist the City Secretary in establishing and implementation of a long-range strategic plan for the future development of the community.
- Respond to citizen requests for assistance in a timely manner and consider methods to increase overall community awareness.

PRINCIPAL DUTIES AND RESPONSIBILITIES:

Provides administrative support to the Mayor, City Council and staff.

Provides information regarding platting and policy and procedures for land uses. Professional communications with other entities regarding platting and land procedures.

Assists and communicates with staff and professional business associates. Assists the public, and employees; provides information on departmental and city policies and procedures as required; and transfers inquiries to the appropriate individual or department as necessary. Responds to and resolves difficult and sensitive citizen inquiries and complaints through established City practices and procedures. Attends City Council meetings.

Assists with **Public Information** requests or **Open Records** Requests for the City of Blue Ridge. Respond to Open Records Requests within the time constraints established by law.

Coordinates City Secretary's Office activities with other City departments and outside agencies and organizations.

Participates in the development and administration of the City's budget; participates in the forecast of additional funds needed for staffing, equipment, materials, and supplies, directs the monitoring and approval of expenditures through the administrative practices and procedures of the City; participates in the preparation of and implements budgetary adjustments as necessary.

Participates and organizes special event planning and coordination.

Perform other job-related duties and responsibilities as assigned and/or needed.

QUALIFICATIONS AND KNOWLEDGE:

Pertinent Federal, State and Local laws, codes and regulations.

Public Information Open Records Act; and City procedures; Local Government Records Act, and political reform requirements. Organizational and management practices as applied to the analysis and evaluation of programs, policies and operational needs.

Office procedures, methods, and computer equipment.

Skill to:

Interpret and understand rules for General Law Cities, Election Code, Local Government Code, Code of Ordinances and other statutes of the State of Texas.

Effectively use business English, spelling, and appropriate grammar.

Work with new technology.

Ability to:

Meet deadlines in a timely manner.

Identify and respond to community and City Council issues, concerns, and needs.

Interpret and explain local and state laws and regulations.

Communicate clearly and concisely, both orally and in writing.

Establish and maintain effective working relationships with those contacted in the course of work including City employees and other government officials, community groups, the general public and media representatives.

Be able to work night meetings. Work may occasionally require travel, including over-night stays, involving training and conducting City business.

Must be able to handle stressful situations.

Must be able to move about office, bend or stoop, retrieve files, lift books or other materials, use step-stools and step-ladders to store and retrieve items of various sizes, shapes and forms weighing up to 40 pounds.

Follow and embrace the City of Blue Ridge Core Values – Trust, Accountability, Teamwork, Pride and Service Excellence.

JOB DESCRIPTION

JOB TITLE: PUBLIC WORKS

REPORTS TO: PUBLIC WORKS DIRECTOR

FLSA STATUS: Non-Exempt (HOURLY) (eligible for overtime pay)

JOB SUMMARY:

This position involves operating equipment and performing manual labor to participate in the completion of assigned projects. Work is performed under the general supervision of the Public Works Supervisor.

Essential Duties:

The following duties are normal for this job. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

- Follows the direction of the Public Works Supervisor with regards to the maintenance and oversight of the city's roadways; this includes patching, spreading chemicals, spreading stone, building up gravel on the road shoulders, and reporting needed repairs needed to the Public Works Supervisor.
- Mows city right-of-ways in the summer and any maintenance during the winter.
- Paints signs and signals on repaired or new pavement.
- Cuts back trees which may be in danger of snagging utility lines or impeding street traffic.
- Chipping tree debris.
- Helps the Water Department repair cut or damaged water lines.
- Helps the Wastewater Department repair cut or damaged sewer lines.
- Helps the Wastewater Department with sewer backups.
- Helps the Wastewater Department with maintenance of pumps, and maintenance of the wastewater plant.
- Installs or repairs street signs in subdivisions and other areas.
- Assists utility companies with directing traffic if asked.

Additional Duties:

- Repairs and maintains Public Works buildings and yards.
- Maintains vehicles and equipment.
- Builds, maintains, and/or repairs fences and structures on city property.

Knowledge, Skills, And Ability:

- Some knowledge of methods and practices of maintaining and repairing roadways.
- Some knowledge of the materials, equipment, procedures and methods used in public works construction and maintenance activities.
- Knowledge of the occupational hazards and safety precautions necessary to the operation of heavy trucks and equipment.

- Knowledge or ability to learn the geography and streets of the city and the location of underground utilities.
- Knowledge of carpentry and mechanical skills.
- Knowledge of basic masonry techniques.
- Ability to understand, interpret, and carry out oral and written instructions.
- Ability to understand and interpret simple diagrams and drawings of assigned projects.
- Ability to establish and maintain effective working relationships with employees, other city staff and the general public.
- Ability to operate or willingness to learn how to operate such equipment as a backhoe, dump truck, tractor, mowing equipment, wood chipper, snow plow equipment, compaction roller, garbage truck, bucket truck, chain saws, limb saw, torch, pavement saws, and various hand tools as required.
- Ability to use basic office technology such as a telephone and a calculator.
- Ability to interact with citizenry in a professional manner.
- Ability to read maps.
- Ability to continuing education to increase knowledge by licensing

Physical Demands and Work Environment:

Physical Abilities: Tasks involve the ability to exert physical effort in moderate to intense work, typically involving some combination of stooping, kneeling, crouching, and crawling, and which may involve some lifting, shoveling, carrying, pushing, and/or pulling of objects and materials of moderate weight (up to 100 pounds). The majority of a normal work day involves standing or walking.

Sensory Requirements: Some tasks require the ability to perceive and discern colors or shades of colors. Some tasks require the ability to perceive and discern sounds. Some tasks require the ability to perceive and discern tastes. Some tasks require the ability to perceive and discern odors. Some tasks require depth perception. Some tasks require the ability to perceive and discern textures. Some tasks require visual perception and discrimination. Some tasks require oral communication ability.

Environmental Factors: Tasks are regularly performed with exposure to adverse environmental conditions including, but not limited to, dirt, dust, pollen, odors, wetness, humidity, rain, fumes, temperature and noise extremes, machinery, vibrations, electric currents, traffic hazards, and toxic agents.

JOB DESCRIPTION

JOB TITLE: UTILITY BILLING CLERK

REPORTS TO: CITY SECRETARY AND CITY COUNCIL

FLSA STATUS: Non-Exempt (HOURLY) (eligible for overtime pay)

JOB SUMMARY:

Under the supervision of the Finance Director, the Utility Billing Clerk is a non-exempt position under FLSA. This employee is responsible for maintaining customer utility account data, preparing and mailing utility bills, entering utility payment data into the City's computer system, preparing reports and assisting with citizen inquiries regarding utilities or other City services. This employee should possess excellent organizational, public relations, and communication skills.

ESSENTIAL DUTIES AND RESPONSIBILITIES

- Manages utility consumption and use data provided from field collection;
- Prepares, prints and mails utility bills;
- Enters utility billing transfers in the City's computer system;
- Prepares and prints final utility notices and shut-off directives; works with field staff to notify customers of shut-off deadlines and procedures for turning service back on;
- Posts utility payments into the City's computer system;
- Assists with citizen inquiries and concerns regarding utilities or other City services;
- Facilitates and maintains records for payment agreements;
- Advises customers of necessary actions and strategies for debt repayment;
- Answers customer questions regarding problems with their accounts;
- Markets, facilitates and maintains records for budget billing and automatic draft programs;
- Prepares various reports as directed;
- Requests and proofs consumption re-reads for utilities;
- Posts bad debt write-offs;
- Coordinates with setoff programs or collection agencies to pursue payment of bad debt; oversees delinquent utility accounts billing and disconnection process; arranges for debt repayment or establishes repayment schedules, based on City policies.;
- Coordinates with local, county, state, federal or other agencies to provide utility assistance to customers who inquire for such services;

- Posts, processes and distributes deposit refunds; • Calculates and processes penalties, deposits, and late fees for utility billings;
- Posts utility billing adjustments;
- Prepares utility shut-off lists and distributes to field staff;
- Prepares corrective billings;
- Provides Customer Service, which includes answering telephones and fielding questions, concerns, and complaints from the general public about any City service;
- Calculates and enters annual Sewer Average amounts;
- Evaluates meter reading proofs for accurate account of usage; evaluates usage for possible leaks;
- Balances cash drawer each day for deposit;
- Operates office machines, such as photocopiers and scanners, facsimile machines, voice mail systems, and computers.
- Responsible for monitoring automated meter reads, correction of errors and manual inputs when necessary;
- Follows department policies and procedures.

The following provided by City Attorney

SOCIAL MEDIA POLICY

April 2020

GOALS

The City of Blue Ridge recognizes the value of social media for reinforcing brand recognition, promoting transparency, engaging constituents, and employees in conversation, and for delivering a wide variety of information to the public. The City intends to leverage the power and reach of social media to communicate and deliver messages directly to its residents and to encourage involvement, interaction, and feedback.

Because the City supports open dialogue and the exchange of ideas, this policy has been created to provide standards and guidelines for appointed and elected officials and staff involved in the use of social media for municipal purposes, as well as an employee's personal use of such platforms. The term "social media" refers to numerous websites, apps, and online tools including but not limited to Facebook, YouTube, Nextdoor, Twitter, Snapchat, LinkedIn, etc.

PURPOSE

This policy will establish guidelines for the use of City sanctioned social media by City (full-time, part-time, temporary, or seasonal) employees as well as elected and appointed officials, who use Social Media and Social Networking to interact with residents on behalf of the City of Blue Ridge.

In an effort to deliver clear, concise and consistent messages on behalf of the City, this policy provides guidance on its management, administration and oversight.

STRATEGY

City social media forums provide an interactive means of sharing information that relates to the City and engaging in ongoing conversation that is relevant.

Social media can be especially effective in communicating information in crisis situations when timeliness of the information is crucial.

While social media provides an effective forum for building relationships and for conveying time-sensitive information in a concise and efficient manner, it does not serve as the City's sole or primary means of communication with residents, businesses, and others. The City of Blue Ridge utilizes well-established means (e.g., official website, public meetings, News Flash notifications) to effectively share information with a variety of audiences.

DEFINITIONS

SOCIAL MEDIA SITES – Third party websites, apps or online tools which allow for the creation of content and dialogue around a posted item. Examples include but are not limited to Facebook, YouTube, Nextdoor, Twitter, Snapchat, LinkedIn, etc.

CITY SOCIAL MEDIA SITES – Those pages or posting location that are established or maintained by an employee of the City who is authorized to do so as part of the employee's assigned duties and using an authorized account established with a City email address.

POST - Content an individual or organization shares on a social media site or the act of publishing content on a site.

PROFILE - Information that a user provides about himself or herself or an organization on a social networking site.

PUBLIC INFORMATION – Information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by an individual officer or employee of a governmental body in their official capacity and the information pertains to official business of the City.

MODERATOR - A person who is responsible for posting or uploading on a social media platform. This person also monitors posts to decide whether comments require a response, engages with the community, investigates issues, provides customer support, and/or responds to inquiries.

SOCIAL MEDIA CONTENT – Informational text, weblink, video, graphics, or photographs posted to a social media site.

TEXAS PUBLIC INFORMATION ACT – state law providing requirements and parameters for access to governmental information in the interest of transparency.

TEMPORARY CUSTODIAN – A current or former governmental employee or official who has possession of public information that has not been provided to the City Secretary as the officer of public information or City Secretary's agent. This information is usually contained on a personal device (e.g.: cell phone, laptop) or in a personal account (e.g.: email or social media).

PUBLIC RECORDS

City emails, text messages, private messages, posts and comments located on City social media sites are considered public information subject to the Texas Public Information Act. Information contained on a temporary custodian's non-City social media sites *may* be considered public information subject to the Texas Public Information Act.

The Texas Public Information Act and laws rules governing litigation may apply to social media content and therefore content must be able to be managed, stored and retrieved to comply with these laws. Users who generate or post content for City authorized accounts must ensure that necessary records are retained and archived by working with the City Secretary's office.

All City social media sites must clearly indicate in the profile section:

Any articles and other content posted or submitted for posting are subject to public disclosure.

RESPONSIBILITIES

It is the responsibility of the City Administrator's office (or designee) to act as the City's official spokesperson and maintain the City's official Web presence via Social Media/Networking and the Internet.

Department heads are responsible for:

- Ensuring employees are aware of, understand and comply with this policy.
- Relaying information for posting to City social media to the City Administrator's office.
- Ensuring all departmental contributors to the City social media adhere to this policy.

AUTHORIZATION

The City of Blue Ridge will primarily utilize a central account with desired social media networks. Individual departments and employees will utilize the central account to convey desired information.

Benefits of one central account include:

- A unified, branded message for the organization.
- Combined and greater number of followers.
- Ease of use for audience.
- Increased information being communicated.
- Increased efficiency of internal communications.

Authorization for a department to establish a separate social media site rests with the City Administrator (or his designee).

- The request must state the necessity of the separate accounts.
- Any existing social media accounts must submit a request to maintain the social media site within 30 days of the effective date of this policy.

After the approval of a social media site by the City Administrator (or designee), the following information must be shared with the City Administrator's Office.

- All login or password information (unless an administrator role can be set up).
- Updated login credentials (in the event they are changed).
- The names of all employees who are authorized to maintain or post on the social media site (i.e., Moderators or Administrators).

The City Administrator (or designee) may disable a City social media site and prohibit posting by City staff for the following reasons:

- violation of this policy.
- unprofessional use of this resource
- lack of use or disinterest by the public.
- or a department's failure to maintain the site.
- In the interest of efficiency or operational necessity.

BRAND MANAGEMENT

The official City logo and a general office contact email () should be displayed somewhere in the main profile to establish authenticity and brand awareness. Where possible, sites

should link back to the official City of Blue Ridge website for forms, documents, and other information. The City of Blue Ridge prohibits the use of its logo by unauthorized accounts, including private accounts operated by employees, elected or appointed officials or other third parties.

FOLLOWING OTHER SOCIAL MEDIA SITES

At the discretion of the City Administrator's office, City sites may follow (become a fan, friend, etc.) other social media sites that are in some way associated with the City of Blue Ridge (e.g. local businesses, sponsors or neighborhood groups), or have relevance and/or benefit to our community.

Additionally, official City social media sites shall have the following disclaimer:

Following, Likes, retweets, shares, etc. are not official "endorsements" by the City of Blue Ridge.

POSTING ON CITY SOCIAL MEDIA ON BEHALF OF THE CITY OF BLUE RIDGE

Use of social media sites must provide worthwhile information that assists the community at large in information dissemination that informs, solves problems, promotes activities or events, improve services, processes, and policies, or builds a sense of community. Frivolous information shall not be posted. If there is uncertainty about something to be published, do not publish unless approved by the City Administrator's office. The City Administrator may designate Moderators who may post to the City's Social Media accounts.

When possible, Moderators posting on behalf of the City shall use word-processing software with spellcheck capability before posting. Messages should be clear, complete, and concise.

- Use correct grammar and spelling.
- Avoid jargon.
- Information should be factual and accurate.

Social media content by Moderators must not:

- Use ethnic slurs, insults, obscenity.
- Violate another person's privacy.
- Violate intellectual property laws.
- Be proprietary.
- Violate Attorney-client privilege or disclose other confidential information.
- Or be subject to State or federal privacy laws.
- Conduct political activities.

Private and non-profit business posts may only be placed or shared on the City's social media for the following reasons:

- Private and non-profit business has sponsored a City event or program.
- The business has just opened.
- For informational purposes as determined by the City Administrator or Mayor and City Council.

Moderators are reminded that postings are widely accessible and retained for reference- for a long period of time, all content should be carefully considered.

Engaging in conduct prohibited by other City policies will not be tolerated and will result in disciplinary action and/or termination.

COMMENTS AND COMMENT MODERATION

To encourage engagement and increase transparency, it is the City of Blue Ridge's intent to leverage social media as a method of two-way communications. To that end, comment and forum features will be activated to allow users to make comments and ask questions.

Moderators may reply to comments when a response is appropriate. When disagreeing with others' opinions or providing comments, the Moderator will do so in a meaningful, respectful, and relevant manner.

Moderators shall not comment on anything related to confidential matters, legal matters, litigating or any parties with whom the City may be in litigation with, without the approval of the City Administrator and/or the City Attorney.

Complaints and requests for service should be directed to the City's website or to the appropriate department to be addressed.

A standard reply may be used to direct users with concerns related to sensitive or complex issues. This standard reply shall read something like:

*The City of Blue Ridge is very interested in insights and concerns expressed here. However, complex topics typically are not effectively discussed in forums such as this. Please contact (Department Name) at _____ extension ** if you wish to voice your concerns further or obtain additional information.*

Posts containing criticism shall be allowed. The City and designated moderators will not edit, hide or delete comments or other's posts. At times, moderators may determine other means/tools are more appropriate ways to respond to feedback or may determine that it is best not to respond to a post at all.

Social media pages shall state:

The City reserves the right to require those who comment on its posts to comply with the Terms of Use of the Social Media site and will report users the City believes to be in violation of the Terms of Use.

PERSONAL USE OF SOCIAL MEDIA

Confidential, proprietary, and non-released City information should not be included in employees' private social media activity. Employees who post private and personal information, gathered through the employee's professional activities distribute private information by email or through text messaging may be subject to discipline under the City's policies and procedures.

An employee's public image in social media, if associated with the City, should meet the standards of the City's Employee Handbook.

For employees with personal social media profiles and blogs:

- If an employee can easily be identified with or identifies themselves as a City employee on their blog or other social media profile, they should make it clear that the views expressed do not necessarily reflect the City's views. To help reduce the potential for confusion, the following notice — or something similar — may be included on employee's sites and/or pages:
"The views expressed here are mine alone and do not necessarily reflect the views of my employer."
- Additionally, employees should not associate their private accounts with their city email address. Nor should they use the city logo or share pictures of themselves wearing city uniforms.
- Employees are encouraged to be respectful to the organization, fellow employees, residents, and other agencies. Employees are encouraged to use the City's complaint resolution process set out in the Employee Handbook.
- Employees are encouraged to only post truthful and accurate statements when referencing the City, co-workers, residents and/or vendors.
- Employees not acting in their official capacity shall not represent or give the impression that they are acting in their official capacity. Do not represent yourself as a spokesperson for the City.
- Monitoring personal social media, including microblogging, text messaging, or instant messaging accounts should not interfere with an employee's work for the City and could lead to disciplinary action.

Employees should be aware that information posted to their personal social media sites pertaining to official City business may be considered public information subject to the Public Information Act. In doing so, the employee may become a temporary custodian of the City's public information. The Public Information Act makes the temporary custodian responsible for either turning over the public information to the City Secretary, forwarding the public information to an official City account (i.e., email), and/or preserving the public information for the duration of the retention period. Please contact the City Secretary for more information on the applicable retention schedule. Employees should respond to a request for public information from the City Secretary or the City Secretary's designee within three business days.

ELECTED AND APPOINTED OFFICIALS - PERSONAL SOCIAL MEDIA SITES

Elected and appointed officials may maintain personal social media sites but should maintain transparency that the Elected or Appointed Officials' site is a personal site and views, or opinions expressed on the personal site are not necessarily reflective of the policy of the City of Blue Ridge.

Elected and appointed officials should be aware that information posted to their personal social media sites that pertains to official City business may be considered public information subject to the Public Information Act. In doing so, the elected or appointed official may become a temporary custodian of the City's public information. The Public Information Act makes the temporary custodian responsible for either turning over the public information to the City Secretary, forwarding the public information to an

official City account (i.e., email), and/or preserving the public information for the duration of the retention period. Please contact the City Secretary for more information on the applicable retention schedule. Elected and appointed officials should respond to a request for public information from the City Secretary or the City Secretary's designee within three business days. Elected or appointed officials who use a personal social media account to discuss or post about City business or for campaigning or election purposes are encouraged to consult legal counsel regarding the maintenance of content on personal sites, including deleting or hiding comments or blocking users.

Questions regarding the application of the Texas Open Meeting Act or Texas Public Information Act to content posted, created or shared via an Elected or Appointed Official's personal social media site should be directed to the City Secretary and/o

CITY OF BLUE RIDGE SOCIAL MEDIA NOTICE

By "Liking" and/or Subscribing to the City of Blue Ridge, Texas ("The City" or "Blue Ridge") Facebook Page or any other Official Blue Ridge social media page ("Social Media Site"), you understand Blue Ridge does not monitor and/or regulate interactions, including comments and/or posts, and acknowledge the City reserves the right to report violations of the host site's policies, rules, and regulations (i.e. the Terms of Service ("TOS")) to the host site, without notice. For more information, consult the host website's TOS.

Example: Facebook's TOS includes compliance with their Community Standards, which prohibits:

- Bullying or harassment: content that appears to purposefully target a person with the intention of degrading or shaming them, or repeatedly contacting a person despite that person's clear desire and action to prevent contact.
- Direct threats: serious threats of harm to public and personal safety, credible threats of physical harm, specific threats of theft, vandalism, or other financial harm.
- Sexual violence and exploitation: content that threatens or promotes sexual violence or exploitation, including solicitation of sexual material, any sexual content involving minors, threats to share intimate images, and offers of sexual services.

Facebook will determine whether a user has clearly, seriously, or repeatedly breached Facebook's TOS, including their Community Standards, and may suspend or permanently disable access to a user's account.

Using the City's Social Media Site:

The City of Blue Ridge's Social Media Site is used to promote the City of Blue Ridge and communicate with its citizens, visitors and businesses. Users of the City's social media accounts should note of the following:

1. Every post you make to a City of Blue Ridge Social Media Site may be a public record and may be disseminated, reproduced, or copied by the City or any other person without any further action by the poster (i.e., the person commenting, creating, or uploading to the site) or without notice by the City.
2. For general comments or communications concerning a specific service or department, please contact the department or division directly by phone, email, in person, or visit the City's website (<https://www.blueridgecity.com/>) for additional contact information.
3. Information (photos, videos, etc.) posted to City of Blue Ridge department, division, board, or committee pages is also subject to the TOS of the host site and may be used by the owners of the host site for their own purposes. Users should only post their own, original content or content which they have been authorized to post by the content owner. For more information, consult the host website's TOS.

4. The City's Social Media Sites are not intended for the dissemination of emergency information. Users experiencing an emergency should contact 9-1-1 or visit the City's website (<https://www.blueridgecity.com/>) for additional contract information.

Questions or concerns regarding Blue Ridge's social media activity and/or this Notice should be sent to [REDACTED] This Notice is subject to amendment or modification at any time, without notice.

Updated 4.26.21

This Notice is not endorsed or administered by any member of [Facebook.com](https://www.facebook.com), but is subject to [Facebook.com](https://www.facebook.com) permissions and Terms or Policies, including but not limited to, the Community Standards.

**VIOLATING THE OPEN MEETINGS ACT USING SNAPCHAT:
SOCIAL MEDIA AND ELECTRONIC COMMUNICATIONS**

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28TH ANNUAL

ADVANCED GOVERNMENT LAW COURSE

July 28 – 29, 2016

Austin

CHAPTER 9

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EDUCATION

The University of Texas School of Law, Austin, TX
J.D., *with honors*, May 2010

The University of Florida, Gainesville, FL
B.S. in Sport Management, *cum laude*, May 2007

LEGAL EXPERIENCE

Texas Municipal League, Austin, TX
Assistant General Counsel, March 2016-present
Research and draft legal briefs on various municipal law subjects, including multiple amicus briefs on contractual immunity issues; review and analyze legislation and state agency rules; testify before legislative committees on issues adopted by the legislative policy committee; assist the General Counsel with Texas City Attorneys Association seminars and special projects; supervise the legal department's law clerk.

Texas Municipal League, Austin, TX
Legal Counsel, February 2012-March 2016
Provide legal information to city attorneys and city officials; review and analyze legislation and state agency rules; testify before legislative committees on issues adopted by the legislative policy committee; author legal Q&A and legislative update articles on a wide range of municipal law topics.

Dallas City Attorney's Office, Dallas, TX
Assistant City Attorney, May 2011-February 2012
Prosecute city ordinance violations, Texas Transportation Code, and Texas Penal Code Class "C" misdemeanor cases in either trials before the court or trials before a jury in one of nine municipal courts for the City of Dallas; prepare for court; research relevant case law; argue, file and respond to court motions.

MEMBERSHIPS AND AFFILIATIONS

International Municipal Lawyers Association, 2013 Amicus Service Award Recipient
Austin Young Lawyers' Association, Teen Court Volunteer
Austin Bar Association, Environmental & Government Law Sections
Austin Kappa Kappa Gamma Alumnae Association, Advisory & House Board Member
Junior League of Austin Provisional Member
USA Gymnastics Professional Member, Judge Levels 1-8
Seedling Mentor

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VIOLATING THE OPEN MEETINGS ACT USING SNAPCHAT: SOCIAL MEDIA AND ELECTRONIC COMMUNICATIONS

I. WHAT IS SOCIAL MEDIA AND WHO USES IT?

The term “social media” refers to forms of electronic communication through which users create online communities to share information, ideas, personal messages, and other content. MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/social%20media> (last visited June 14, 2013). Some well-known examples include Facebook, Twitter, Linked-In, and YouTube. The most popular social networking site in the world is Facebook with 1,590,000,000 users worldwide as of April 2016. STATISTA STATISTICS PORTAL, <http://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users> (last visited June 8, 2016). The three fastest growing social media platforms in 2015 were Line (a Japanese messaging social app), Facebook Messenger, and Snapchat. STATISTA STATISTICS PORTAL, <http://www.statista.com/statistics/381933/messaging-social-app-user-growth> (last visited June 8, 2016).

To understand the proliferation of social media and appreciate that ignoring usage by local governments and their officials and staff is not an option, it is necessary to look at some user statistics. In 2005, a mere 7% of American adults used social networking sites. By 2015, 65% of American adults used social networking sites or apps. PEW RESEARCH CENTER, <http://www.pewinternet.org/2015/10/08/social-networking-usage-2005-2015/> (last visited June 8, 2016). While young adults (ages 18 to 29) are the most likely to use social media – as 90% do – use among those 65 and older has more than tripled since 2010. Today, 35% of those 65 and older report using social media, compared with just 2% in 2005. Over the past decade, those in higher-income households were more likely to use social media. More than half (56%) of those living in the lowest-income households now use social media, though growth has leveled off in the past few years. Turning to educational attainment, you see a similar pattern. Those with at least some college experience have been consistently more likely than those with a high school degree or less to use social media over the past decade. 2013 was the first year that more than half of those with a high school diploma or less used social media. Those who live in rural areas are less likely than those in suburban and urban communities to use social media, a pattern consistent over the past decade. Today, 58% of rural residents, 68% of suburban residents, and 64% of urban residents use social media. STATISTA

STATISTICS

PORTAL, <http://www.statista.com/statistics/471436/us-adults-who-use-social-networks-urbanity/> (last visited June 8, 2016). Many local governments in Texas are using social media as a tool to communicate with citizens. Rather than waiting until a monthly council meeting to hear from citizens in the “public comment” section of the agenda, cities are able to constantly interact with citizens through their Facebook page or city Twitter account. Although this new technology is an overall positive for local governments in increasing outreach and efficiency, there are concerns with utilizing social media platforms.

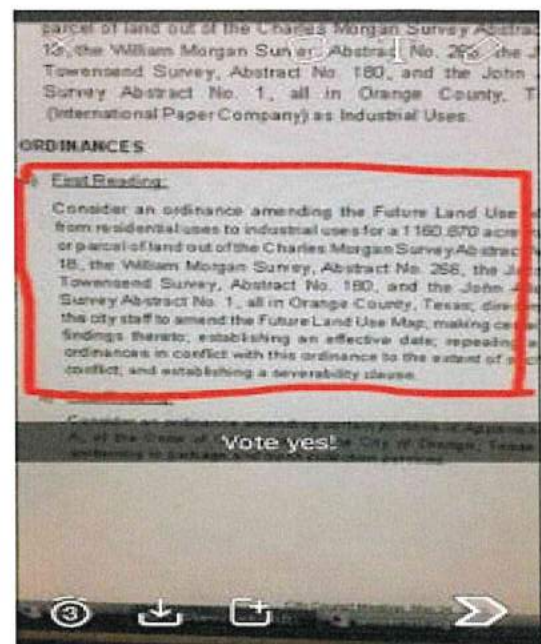
II. CONTROLLING THE SOCIAL MEDIA MESSAGE

One of the challenges for local governments is the ability to control the social media message. Unlike private companies, local governments are limited by the Constitution and state statutes. The most well-known restriction on local governments in Texas is the Open Meetings Act.

A. Open Meetings Act

Communications between a quorum of a city council about public business, no matter the forum or the time, can be a “meeting” to which the Open Meetings Act applies. If the Act applies to a discussion, an agenda must be posted 72 hours in advance, and the public must be able to attend. TEX. GOV’T CODE § 551.043.

What happens when one of your local government officials sends this snapchat to another official? How will you advise that councilmember?



Knowledge, training, and policies, of course, are key in ensuring local government officials are both legally and

responsibly using social media. In this instance, this provision of the Texas Open Meetings Act comes into play:

- (a) A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.
- (b) An offense under Subsection (a) is a misdemeanor punishable by:
 - (1) A fine of not less than \$100 or more than \$500;
 - (2) Confinement in the county jail for not less than one month or more than six months; or
 - (3) Both the fine and confinement.

TEX. GOV'T CODE § 551.143

In this example, the snapchat sent telling another official how to vote does not directly violate the Texas Open Meetings Act (unless of course a quorum is two). However, local government officials must be aware that “meeting” in less than a quorum to circumvent the Act’s requirements also violates the Act and involves criminal penalties.

It is essentially impossible for a Facebook post, tweet, or snapchat message to meet the Open Meetings Act’s notice requirements. So how can local government officials use social media responsibly without facing jail time for an Open Meetings Act violation?

1. Online Message Board¹

Recent legislation allows some discussion over the Internet. Senate Bill 1297, a bill that passed during the 83rd Legislative Session, added a provision to the Texas Open Meetings Act providing that communication between councilmembers about public business or public policy over which the council has supervision or control *does not* constitute a meeting if certain conditions are met. TEX. GOV'T CODE § 551.006. The communication must be:

- a) in writing;
- b) posted to an online message board that is viewable and searchable by the public; and

- c) displayed in real time and displayed on the message board for no less than 30 days after the communication is first posted.

Id. A city is prohibited from having more than one online message board used for these purposes. *Id.*

Additionally, the online message board must be prominently displayed on the city’s primary website and no more than one click away from the city’s website. *Id.* The message board may only be used by city councilmembers or city employees who have received authorization from the council. *Id.* If a city employee posts on the message board, the employee must include his or her name and title with the communication. *Id.* The council may not vote or take action by posting on the city’s online message board, and if the city removes a posted message, the city must retain the posting for six years. *Id.*

Facebook may satisfy the requirements of Section 551.006 of the Government Code. If the city intends to use Facebook as the city’s sole online message board, the city must ensure that the Facebook page is “public” and viewable by the public. Additionally, a disclaimer underneath the link from the city’s main page and on the Facebook page should be displayed with language stating that the page is in compliance with Section 551.006, and only members of the city council or staff members authorized by the council may post on the board.

2. Deleting Inappropriate Comments

Currently, there is little guidance on whether or not a local government is able to delete an individual’s comment on Facebook. However, at least one state’s attorney general has concluded that deleting a citizen’s Facebook comment does not violate the state’s Open Meetings Act (OMA). *OMA Request for Review*, 2012 PAC 21667, Ill. A.G. (Oct. 31, 2012). The Illinois attorney general concluded that a Facebook page is neither:

“under the control of or maintained by a public body.”

Id. Thus, the city’s Facebook page does not enjoy the same status under the OMA as the city’s website does, and deleting the comment did not violate the Illinois Open Meetings Act. *Id.* The individual who had his comment deleted and requested the opinion also argued that the city’s actions violated his First Amendment free speech rights. *Id.* Since the Illinois attorney general does not have jurisdiction over First Amendment claims, the

¹ Cities the author is aware of using an online message board currently: Austin, Castroville, Kingsbury, Mineral Wells, and Shoreacres.

opinion disposed of the request without addressing the merits of the First Amendment claim. *Id.*

A lawsuit regarding the first amendment issue was, however, filed in 2012, in Hawaii. *Haw. Def. Found. v. City & Cty. of Honolulu*, No. CV12-00469 JMS-RLP, 2012 WL 3642832 (D. Haw. 2012) (trial pleading). The lawsuit claimed the Honolulu Police Department violated a citizen's First Amendment free speech rights by deleting his Facebook comment from the department's page. *Id.* The plaintiff argued that because the city created and designated this Facebook page as the police department's "official" Facebook page, the page is a "traditional public forum." *Id.* As such, deleting comments is unconstitutional censorship. *Id.* The court was not afforded the opportunity to rule on these arguments. Instead, after the Hawaii Police Department and City and County of Honolulu changed their policies and procedures with regard to administration of their Facebook pages, the parties agreed to a dismissal of the case. *Haw. Def. Found. v. City & Cty. of Honolulu*, No. 12-00469 JMS-RLP, 2014 WL 2804445 (D. Haw. 2014.)

Whether deleting comments from a local government's Facebook page is a constitutional violation depends on the type of "forum" the Facebook page is: an "open forum," a "limited public forum," or a "closed forum." Whether and how speech may be limited depends on:

- a) the type of forum,
- b) the city's specific reasons for deleting the comments, and
- c) the content of the comments.

The United States Supreme Court has concluded that a governmental entity may create a forum that is not traditionally open to the public but has been opened by the governmental body for limited use by certain groups or for discussion of certain subjects. *Pleasant Grove City v. Summum*, 555 U.S. 460, 461 (2009). This type of location is known as a "limited" or "designated public forum." *Id.* In a limited public forum, a city may impose restrictions on speech as long as the restrictions are reasonable and content-neutral. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106-07 (2001).

One option for local governments may be a disclaimer and acknowledgement on the social media account that the page is a "limited public forum." Additionally, the city will want to include guidelines for citizen comments from the city's social media policy on the social media platform.

B. Public Information Act

Another issue that has developed as new technologies have emerged: responding to Public Information Act (PIA) requests. S.B. 1368, a bill that passed during the 83rd Texas Legislative Session,

codified previous attorney general opinions. TEX. GOV'T CODE § 552.002. Section 552.002(a) of the Government Code clarifies that the definition of "public information" includes information that is written, produced, collected, assembled, or maintained in connection with the transaction of official business:

- 1) For a governmental body, and the governmental body spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- 2) By an individual officer or employee of a governmental body in the officer's or employee's official capacity, and the information pertains to official business of the governmental body.

Id. The bill adds that the general forms where media containing public information exist include email, Internet posting, text message, instant message, and other electronic communication. TEX. GOV'T CODE § 552.002(c).

Clearly, tweets or posts from a local government or local government department's account are subject to the PIA. But, what about a city councilmember's tweet? If the tweet is in connection with the transaction of official business, it is subject to disclosure under the Texas Public Information Act. Information is in connection with the transaction of official business if it pertains to official business of the city, and it is created by, transmitted to, received by, or maintained by an officer or employee of a city in the officer's or employee's official capacity or as a person performing official business on behalf of the city. TEX. GOV'T CODE § 552.002(a-1). "Official business" under the Act means any matter over which a city council has any authority, administrative duties, or advisory duties. TEX. GOV'T CODE § 552.002(2-a).

The difficult part for government lawyers, of course, is obtaining these social media posts from local government officials. The good news is that at least one court has concluded that the PIA provides no real "teeth" to force an official to turn over public information. The Austin Court of Appeals recently addressed this question. *El Paso v. Abbott*, 444 S.W.3d 315 (Tex. App. 2014), review denied (June 12, 2015). The case is essentially about a city councilmember refusing to give the city emails from a private account, and the court concludes that:

- The PIA does not authorize a requestor to file suit for a writ of mandamus compelling a governmental body to make information available when the city has made reasonable efforts (i.e., is not refusing or unwilling) to comply with the PIA;

- Other than requiring that information be produced promptly for inspection, duplication, or both, the PIA provides no guidance regarding the efforts a governmental body must take to locate, secure, or make available to the public information requested; and
- A city does not have to resort to suing an individual in district court under the Local Government Records Act when it is believed that the person holds, but has not provided, a responsive document.

A local government can and should have a policy outlining how the local government intends to obtain records from local officials. However, at this time, all a city can and is required to do is to ask an official to turn over responsive documents from his or her private accounts.

III. RECORD RETENTION

Government record retention goes hand in hand with Public Information Act issues. Knowing that the Public Information Act applies to social media posts, it is important to look at first whether the post is a government record, and once that determination is made, how to retain the post.

A. Is a Social Media Post a Government Record?

Local government records include records in an electronic medium. TEX. LOC. GOV'T CODE § 201.003(8). Thus, a city social media post is considered a government record subject to the Local Government Records Act. Many times, though, social media content is **not** required to be maintained because the information contained is duplicated or exists in a different format. A government is not required to retain duplicated or identical copies of information. TEX. LOC. GOV'T CODE § 201.003(8)(A).

Additionally, information shared that is cursory and minimal with no lasting importance or need beyond its initial purpose of informing do not require capture and retention. 13 Tex. Admin. Code § 6.91(8) (2000). An example of a transitory social media post is a Facebook post advertising an upcoming event. The content shared is of short-term value, especially once the event is over.

When deciding whether a social media post is a record that should be maintained in accordance with the local government records retention schedule, there are four important questions to ask:

- Does this document government business or provide evidence of an important action?
- Is this a unique record?
- Does the information exist elsewhere in a different record or format?

- Does it fit into my government's definition of a social media record?

Megan Carey, *FAQ: When is Social Media a Record*, Texas State Library & Archives Commission Blog (Mar. 17, 2016), <https://www.tsl.texas.gov/slrmblog/2016/03/faq-when-is-social-media-a-record/>.

B. How Should Social Media Posts be Retained?

There is no clear answer on the best way for a city to retain social media records. A city might consider taking one of the following approaches (or a combination thereof) in order to ensure that the city is complying with Texas records retention laws:

- 1) At a minimum, the city official or employee tasked with records retention should take and retain periodic screenshots of the city's Facebook or Twitter pages, especially if the city posted the comments. The benefit of this option is that it is a cost-effective way to retain these records. The drawbacks are that it places a considerable demand on staff time and physical resources, requiring government officials and their support staff to adhere to a regular schedule of printing out screen shots. Also, at a time when most cities are trying to reduce their consumption and storage of paper, cities may be forced to once again create physical filing space for screen captures.
- 2) A second option is for cities to simply rely on social networking companies (i.e., Facebook) to archive the online communications. This is probably the most cost-effective and efficient means of preserving a government's social media interactions with the least amount of demand on staff time. Unfortunately, a private company's record retention policy may not comply with open record laws, leaving governments open for potential violations. Moreover, the city has no control over the third-party "host" as to what is being retained and, more importantly, for how long the information is retained.
- 3) A third alternative is for governments to use an archival subscription service. There are a number of companies that offer these services, such as Smarsh and ArchiveSocial.

IV. EMPLOYMENT LAW ISSUES AND SOCIAL MEDIA USAGE

Social media use has created a number of employment law issues. For employers, including government employers, it is difficult to understand the outer bounds of what is and is not acceptable social media behavior. For example, social media has changed the employee hiring process: potential employers are able to find out much more about an applicant than simply what they have disclosed on their employment application by viewing their social media accounts. But how far can (and should) employers go when researching an applicant?

A. Hiring

Can a local government ask a potential employee for their social media account passwords? In Texas, the answer is still yes. Four different bills were filed during the 83rd Texas Legislative Session that relate to this question. One would have made it an illegal employment practice for an employer, including a local government, to require or request employees or applicants to give their user name, password, or other access to their personal electronic accounts, such as an email or a social networking account. Another would have allowed an employer to access information about an employee or applicant that is open to the public on the Internet or to expressly manage an employee's use of city electronic equipment or use of electronic equipment during work hours. However, none of these bills passed.

Currently, there are fifteen states with laws in place specifically restricting an employer's ability to access the personal social media accounts of employees and applicants: Arkansas, California, Colorado, Connecticut, Delaware, Illinois, Maryland, Michigan, Montana, New Jersey, New Mexico, Oklahoma, Utah, Virginia, and Washington. Legislation has been introduced or is pending in at least 14 other states. NATIONAL CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/telecommunications-and-information-technology/employer-access-to-social-media-passwords-2013.aspx> (last visited June 10, 2016). On the federal level, bills to prevent this practice have been introduced but have not been passed.

Even if a candidate agrees to disclose a social networking password to a local government, legal issues abound with this practice. The local government may learn about the job candidate's religion, national origin, age, disability, or other protected health information, which could result in a discrimination lawsuit against the entity. Additionally, asking a candidate to provide their Facebook password forces the individual to violate Facebook's terms of service. When using Facebook, users agree to the stipulations under "Registration and Account Security." One of these commitments is that users will not share their password or let anyone else

access their account. Whether or not supervisors or other hiring personnel can or should ask a potential employee for access to their social media accounts should be addressed in the entity's social media policy.

B. Taking Adverse Employment Action

A local government can discipline or terminate an employee for a post made on social media. However, local governments need to exercise caution when doing so. Unlike employers in the private sector, cities are limited by the First Amendment when regulating the expressions of their employees. However, public employees do not enjoy absolute freedom to post anything they want on a social media site. The general rule used to make this determination is the "*Pickering-Connick*" rule. When speech by a public employee is involved, courts use a three-part test:

- 1) Whether the employee's speech was a matter of public concern;
- 2) Whether the employee's First Amendment interests in speaking outweigh the interests of the government, as an employer, in providing effective and efficient services; and
- 3) Whether the employee has shown that the speech played a substantial part in the government's employment decision.

Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, Will County, 391 U.S. 563 (1968); *Connick v. Myers*, 461 U.S. 138 (1983).

Recently, courts in other states have used this test when terminated employees claimed their First Amendment rights were violated. In New Jersey, a public school teacher was terminated for violating a school conduct policy after posting two statements on her Facebook page about her class. *In re O'Brien*, No. A-2452-11T4, 2013 WL 132508, at *3 (N.J. Super. Ct. App. Div. Jan. 11, 2013) ("I'm not a teacher—I'm a warden for future criminals!" and "They had a scared straight program in school—why couldn't [I] bring [first] graders?"). The Superior Court of New Jersey determined that O'Brien:

"was making a personal statement, driven by dissatisfaction with her job and the conduct of some of her students."

Id. at *4. She was not making comments on a matter of public concern. *Id.* The court went on to state that even if her statements were a matter of public concern:

"her right to express those comments was outweighed by the district's interest in the efficient operation of its school."

Id. Thus, O'Brien failed to establish that her Facebook postings were entitled to First Amendment protection.

An Atlanta police officer's Facebook post regarding the handling of a forgery investigation was viewed by the court as venting frustration with a superior, rather than a public concern. *Gresham v. City of Atlanta*, No. 1:10-CV-1301-RWS, 2011 WL 4601020, at *5 (N.D. Ga. Sept. 30, 2011). The court concluded that the first prong of the Pickering-Connick test was satisfied: the officer spoke on a matter of public concern. *Id.* at *2. However, the court concluded that the officer's interest in speaking on this matter of public concern did not outweigh the police department's countervailing interests. *Id.* at *5. The court specifically pointed to the police department as a quasi-military organization where comments concerning coworkers' performance of their duties and superior officers' integrity can directly interfere with the confidentiality and efficient operation of the police department. *Id.* at *2. The court ultimately concluded, then, that the officer's First Amendment rights were not violated. *Id.* at *6.

Although the National Labor Relations Act (NLRA) does not apply to local governments and their employees, current decisions may be instructive, as they largely rest on discipline that would impair an employee's ability to collectively bargain or speak to others about working conditions (Section 7 of the National Labor Relations Act). The National Labor Relations Board (NLRB) has addressed employee discipline over social media posts increasingly more often recently, so their decisions criticizing and overturning private employer discipline of employees related to social networking posts can provide guidance on the type of provisions in social media policies that may not pass *Pickering-Connick* analysis.

In one such recent case decided by the NLRB, Chipotle employee James Kennedy tweeted:

@ChipotleTweets, nothing is free, only cheap
#labor. Crew members make only \$8.50/hr
how much is that steak bowl really?

Chipotle Servs. LLC v. Pennsylvania Workers' Org. Comm., (NLRB, PA 2016).

Chipotle's social media strategist saw the tweet and emailed the regional manager forwarding the tweet and requesting that he ask Kennedy to delete the tweets. The strategist attached the company's social media policy to the request. The language in the policy read:

- "If you aren't careful and don't use your head, your online activity can also damage Chipotle or spread incomplete, confidential, or inaccurate information."

- "You may not make disparaging, false, misleading, harassing or discriminatory statements about or relating to Chipotle, our employees, suppliers, customers, competition, or investors."

The NLRB judges noted that an employer violates Section 8(a)(1) of the NLRA:

"when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights."

The NLRB judges noted that when work rules, which include social media policies, are ambiguous, they may be read by employees to prohibit lawful Section 7 activity and may serve to chill employees in the exercise of their Section 7 rights. The judges concluded that the prohibitions on spreading incomplete, confidential, or inaccurate information and against making disparaging, false, or misleading statements violate section 8(a)(1) of the NLRA because they could reasonably be construed to include matters protected by Section 7. The prohibitions against harassing or discriminatory statements are lawful, though.

Local governments should ensure their social media policies are unambiguous and that personnel policies are followed when deciding whether or not to discipline an employee. In some cases, a frank discussion with an employee about a social media post can solve a problem. Many times, the anonymity that the Internet provides encourages employees to make statements on social media that they normally would not make.

V. ELECTION LAW ISSUES

There is little doubt that social media has changed the way campaigns for political offices are run. Beyond the media coverage of Donald Trump's ridiculous tweets, however, there are election law issues that are affected by the proliferation of social media. Specifically, political advertising and first amendment protection of election-related content present issues in relation to social media posts.

A. Political Advertising

The Election Code prohibits an officer or employee of a political subdivision from knowingly spending, or authorizing, the spending of public funds for political advertising. TEX. ELEC. CODE § 253.003. Violating this provision is a Class A misdemeanor with a maximum punishment of confinement in jail for a year or a \$4,000 fine.

To date, there have not been instances of Texas government officials or employees being prosecuted for this based on social media posts, but it is definitely something you will want to be aware of, especially in

the context of a ballot proposition that the entity may “support.” As a governmental entity, you cannot expend public funds to support this, meaning there should be NO mention of support or opposition of a proposition on a local government’s social media platforms. Individual city officials or employees are able to use their personal social media accounts to support or oppose a proposition. However, it should be clear in the entity’s social media policy that the individuals are prohibited from doing so on a city device or while on the clock.

B. Ballot Selfies

Ballot selfies are against the law in thirty-five states. DIGITAL MEDIA LAW PROJECT, <http://www.dmlp.org/state-law-documenting-vote-2012> (last visited June 9, 2016). In Texas polling places, signs are displayed asking citizens to turn off their wireless device. While the Texas Election Code does not specifically prohibit ballot selfies, an individual is prohibited from using a cellphone within 100 feet of a voting station. TEX. ELEC. CODE § 61.014. There is not a criminal penalty, instead the presiding judge “may” require a person who violates the section to turn off the device or leave the polling station.

Contrast that with the law enacted in New Hampshire that prevented voters from taking and disclosing digital or photographic copies of their completed ballots. Leon Rideout, a candidate for office in New Hampshire, took a photograph of his ballot where he had voted for himself with his phone and tweeted it out. After the tweet, an investigator with New Hampshire’s Attorney General’s office called him and requested an interview. A month later, Rideout and two other plaintiffs filed a 1983 lawsuit challenging the constitutionality of the New Hampshire law on first amendment grounds. *Rideout v. Gardner*, 123 F.Supp.3d 218 (D.N.H. 2015)². The Federal District Court in New Hampshire concluded that the New Hampshire law was content based because it restricted the speech, or tweet in this case, on the basis of its subject matter. *Id.* at 229. The only images that are barred by the law are images of marked ballots, and content-based restrictions on speech are subject to strict scrutiny. *Id.* Using this analysis, the court concluded that the law is vastly over-inclusive and could be addressed by less restrictive means. *Id.* at 234. New Hampshire has appealed the decision to the court of appeals. *Rideout v. Gardner*, No. 15-2021 (1st Cir. filed Sept. 9, 2015).

Arizona and Utah have enacted laws that expressly permit ballot selfies. Ariz. Rev. Stat. § 16-1018(4) (LexisNexis 2015). Utah Code Ann. § 20A-3-504(3) (West 2015). Expect to see additional litigation involving content shared on social media from the

voting booth and other states to follow Arizona and Utah’s lead in expressly permitting the ballot selfie.

VI. SOCIAL MEDIA POLICIES

Local governments that have a social media presence, or are considering establishing one, should adopt a social media policy to govern the administration and monitoring of site content, set ground rules for public input and comments, and adopt policies for employee usage of social media. There are two sides to a social media policy: one internal, that mandates security rules and account use, and one external, that applies to the public who will be consuming the media.

There are eight essential elements encompassing these two sides that should be found in a local government’s social media policy. These include:

1. Acceptable Use

Acceptable use policies outline a local government’s position on how employees are expected to use government resources, restrictions on use for personal interests, and consequences for violating the policy. Acceptable use may also encompass the government’s purpose in establishing and maintaining social networking sites.

2. Account Management

Account management policies provide guidance on the creation, maintenance, and destruction of social media accounts. The lack of a clearly defined policy on account management may result in a situation where officials do not have a handle on what types of social media accounts are being established, maintained, or closed by their employees for official government use. Therefore, a critical element to a social media policy is establishing who may set up the entity’s social media account, as well as a procedure for establishing an account. The policy should also provide for an administrator to oversee and supervise the social media networking sites. The administrator should be trained regarding the terms of the policy and his or her responsibilities to review content to ensure it complies with state and federal law, the entity’s policies, and furthers the goals of the entity in utilizing social networking platforms.

3. Citizen Conduct

The social media policy should identify the type of content that is *not* permitted on the entity’s social media site and is subject to removal. This might include comments that are profane, obscene or have violent content, discriminatory content, threats, solicitation of business, content that violates a copyright or trademark,

² Snapchat filed an amicus brief in this case supporting Rideout’s position.

and any content in violation of federal, state, or local law. The policy should also contain a disclaimer that any comment posted by a member of the public is not the opinion of the local government. The disclaimer should also provide that all postings are public and should not include personal or sensitive information. Finally, the policy should include language that reserves the right of the administrator to remove content that violates the policy or any applicable law.

4. Employee Access

Local governments have discretion, through website filtering tools, to restrict employee access to areas of the Internet deemed non-work related, such as personal email or leisure websites. The employee access portion of the policy should include, if applicable, employer monitoring of employee use of government computers. The policy should also caution employees that they have no expectation of privacy while using the Internet on any government-owned computer, cell phone, or other Internet equipped electronic device. This portion of the social media policy may also include a requirement that the employee or official turn over any post that is subject to the Public Information Act.

5. Employee Conduct

In general, professional employee conduct should already be outlined by a entity's personnel policy or ethical code of conduct that addresses what is "right" and "wrong" in terms of employees' behavior and sets out the consequences, should a violation occur. In a social media policy, a local government will want to extend this code of conduct to an employee's social networking activities.

The policy might also require employees who identify themselves as employees of a particular government or company to post a disclaimer that any postings or blogs are solely the opinion of the employee and not the entity. Additionally, employees should not use the entity's logo, seal, trademark, or other symbol without written consent from the entity. The policy should also address the protection of confidential and sensitive government information and records, as well as personal information relating to residents or utility customers.

6. Legal Issues

The policy should include language regarding compliance with applicable federal, state, and local laws, regulations, and policies. It should be made clear that content posted on a city's official website or social networking site is subject to the Texas Public Information Act and record retention laws. In addition, content posted on social media sites may be subject to e-discovery laws. The policy should include a notice that any information protected by copyright or trademark should not be posted or maintained on the

social media site unless permission has been granted by the owner of the intellectual property. Finally, the policy should acknowledge that social media service providers have their own terms of service that both governmental entities and members of the public must follow.

7. Content

The issues of who is permitted to post or change content on the local government's social media pages and who is responsible for ensuring its accuracy should be addressed in the policy. This portion of the social media policy may also outline the type of content that should be posted to achieve the entity's goal in maintaining a social media presence.

8. Security

Lastly, local governments should work with their information technology staff to ensure that the social media policy includes necessary policies regarding the security of data and technical infrastructure in light of the new uses, users, and technologies related to social media use. The technology concerns addressed in the policy may focus on password security, functionality, authentication of identity using public key infrastructures, and virus scans.

Compiled from: Jana Hrdinová, Natalie Helbig, and Catherine Stollar Peters, *Designing Social Media Policy for Government: Eight Essential Elements*, Center for Technology in Government (2010); Daniel D. Crean and Lisa Soronen, *Social Media & Electronic Communications and Employee Privacy*, International Municipal Lawyers Association (2012).

Most importantly, once a city has developed a social media policy, all employees should be required to sign a written acknowledgement that they have received, read, understand, and agree to comply with the social media policy. Included in Appendix A are example social media policies that contain all or most of these essential elements.

It is a good idea for local governments to provide a link to their social media policy from their social media accounts. At the very least, the citizen conduct portion, including when a post may be removed should be provided. If your local government uses Facebook, keep in mind that their terms of service require a local government to post a disclaimer on its official Facebook page referring visitors to the government's official website (if it has one):

5. Disclaimer Requirement

If you have an official website, your Page must contain, in a prominent location:

"If you are looking for more information about [Government Entity], please visit [website URL]."

VII. CONCLUSION

Social media platforms can be both a blessing and a curse to local governments. The bottom line, though, is that social media usage will continue to increase and local governments must utilize social media tools to meaningfully engage with citizens. The most important thing we, as government law practitioners, can do is to have social media policies in place and to revisit these policies on a regular basis to ensure that local government policies are keeping up with emerging technologies.