

# Town of Erie Social Media Policy

## 1. BACKGROUND AND PURPOSE

The Town of Erie (the "Town") has an overriding interest in deciding what is "spoken" on its behalf on social media. Social media has recently been found to be a public forum subject to First Amendment protections, and can be subject to both the Colorado Open Meetings Law, C.R.S. § 24-6-401, *et seq.*, and the Colorado Open Records Act, C.R.S. § 24-6-200.1, *et seq.*. To address the fast-changing landscape of the Internet and the way citizens communicate and obtain information online, individuals sitting on Town boards and commissions may consider using social media tools to reach a broader audience. The Town encourages the use of social media to further the goals of these boards and commissions, where appropriate, but adopts this Policy to establish guidelines for the use of social media.

## 2. APPLICABILITY

This policy applies to all individuals, whether elected or appointed, sitting on Town boards, commissions or committees.

## 3. DEFINITIONS

- (a) "Board" means every Town board, commission, council and committee, whether statutory or advisory, including without limitation the Board of Trustees, the Planning Commission, the Erie Economic Development Council, the Historic Preservation Advisory Board, the Board of Adjustment, the Open Space & Trails Advisory Board, the Sustainability Advisory Board and the Tree Board.
- (b) "Member" means an individual that sits on a Board.
- (c) "Official Account" means a Social Media account that is used for communicating with the public in relation to Town-related activities, duties, or goals.
- (d) "Personal Account" means a Social Media account that is used solely for communicating with the public in relation to personal activities and opinions.
- (e) "Social Media" means websites and services that focus on creating and fostering online social communities and connecting users from varying locations and interest areas, including without limitation social networks (Facebook, LinkedIn and Nextdoor), instant messaging (SMS), blogs, wikis and online collaboration (SoundCloud), microblogging (Twitter), status updates, online forums and discussion boards, chats, or groups (Google Groups, Reddit, Yahoo and Whirlpool), website link sharing, video conferencing, virtual worlds, location-based services, VOD and podcasting, geo-spatial tagging (Foursquare and Facebook CheckIn), and photo and video sharing (Flickr, Instagram, Snapchat and YouTube).

#### **4. PERSONAL ACCOUNTS TO BE DISTINCT FROM OFFICIAL ACCOUNTS**

Personal Accounts and Official Accounts should be distinct and maintained separately. Personal Accounts should not be used in an official capacity. The name, title, tag, or link of a Personal Account should not include language that would indicate that the Member is acting in any official capacity when posting on that account. Personal Accounts should not be created using a Town-provided email. A Personal Account that violates these provisions is at risk of being deemed an Official Account, regardless of when such Personal Account was established and for what purpose.

Official Accounts should be established using the Member's Town email account (if one exists) and should be maintained in a professional manner. Where possible, Official Accounts should include language that indicates the title of the Member, such as "Trustee" or "Board Member" and should include a link back to the Town's website.

Failure to comply with this Section may expose both the Member and the Town to risks associated with First Amendment violations, Fair Campaign Practices Act violations, and Open Meetings Law violations.

#### **5. PROHIBITION ON CAMPAIGNING IN OFFICIAL ACCOUNTS**

The Fair Campaign Practices Act prohibits Town resources from being used for political purposes. Members may not use Official Accounts as a tool for reelection or for any other election or campaign purpose. Members who wish to use Social Media for campaigning must establish separate Personal Accounts for that purpose and may not access those Personal Accounts through Town technology, including Town computers and Town-issued tablets.

#### **6. LEGAL RISKS**

Most Social Media sites require users to agree to terms of service that include such provisions as indemnity and defense clauses and applicable law and venue clauses. When a public agency creates an account on a Social Media site, it typically must agree not to sue the site or allow the site to be included in suits against the agency, and requires the account owner to pay the site's legal costs arising from such suits. Most terms of service also assert that a certain state law applies to all legal actions (usually California). Because of these provisions, any Member violating the terms of service while using an Official Account exposes the Town to significant legal risks. The provisions of this Policy are intended to protect the Town and Members from such risks, and thus compliance with both this Policy and the terms of service of the Social Media platform is mandatory. Members who are not prepared to comply with this Policy and the individual terms of service should not use Social Media while serving on a Board.

## **7. MONITORING SPEECH AND ACCESS TO ACCOUNTS**

Access to all Official Accounts must be set to "public." Because Official Accounts are public fora for First Amendment purposes, no member of the public may be banned from accessing any Official Account.

Comments for a post may be turned on or off. If comments are turned on, no member of the public may be prohibited from submitting a comment. However, comments may be removed based on the following criteria if carried out in a viewpoint-neutral manner:

- (i) Comments that are obscene, sexual in nature, or pornographic;
- (ii) Comments that are defamatory or constitute harassment;
- (iii) Comments that promote illegal activity; or
- (iv) Comments that violate the intellectual property rights of the Town or others.

Removed comments must comply with the standards for preservation of records under the Colorado Open Records Act.

Alternatively, comments for a post may be turned off (to use Social Media as a one-way communication tool). Comments may only be turned off for the entire public and may not be turned off for individuals, including individuals whose comments are repeatedly subject to removal.

## **8. UNLAWFUL MEETINGS**

Of particular concern for Members' use of Social Media is the risk of violating the Colorado Open Meetings Law. Under the Open Meetings Law, all public business must be conducted in public, and a meeting of more than two Members must be noticed and open to the public (and a meeting can be by electronic means, including Social Media). The dynamic nature of Social Media and the sheer volume of posts may make it difficult to track who is involved in the discussion and detect when the line has been crossed. As such, Members should not communicate in their official capacity with other Members by Social Media commenting or messaging, whether or not such communication is public or private. While informal communication with constituents is generally acceptable, lengthy discussion of public business in such a manner is risky, especially if it involves other Members.

## **9. COMMUNICATIONS ON PERSONAL ACCOUNTS**

If a Member discusses Town business on a Personal Account, that Personal Account may be deemed an Official Account. Posts on Personal Accounts that include discriminatory remarks, harassment, threats of violence or similar inappropriate or unlawful conduct, and are intended to bully, disparage or harm the reputation of the Town may subject the Member to disciplinary action under this Policy.

## **10. CONFIDENTIALITY**

No Member may disclose on Social Media confidential or proprietary information acquired by way of his or her official position. This restriction applies whether the information is disclosed on Official Accounts or Personal Accounts, or by any other method.

## **11. PRESERVATION OF PUBLIC RECORDS**

Content published on Social Media that relates to the conduct of government actions must be retained and managed by the Town in compliance with the Open Records Act. Members should be prepared to treat each comment, post, photo, and list of individuals connected to a Social Media site as an open record. Absent exigent circumstances permitting removal, content on an Official Account may not be deleted. In any case, content shall not be deleted from an Official Account until a screen capture has been taken of the offensive content and preserved by the Town Clerk according to the records retention schedule. Content on Personal Accounts that relates to Town business must be treated in the same manner.

## **12. SECURITY OF OFFICIAL ACCOUNTS**

Members should use necessary care to maintain the security and integrity of Official Accounts to prevent the unauthorized access or posting of content. Account passwords should be changed regularly and immediately after the password or Social Media site accessed using the password has been, or is suspected of being, compromised. Passwords should not be shared with any other individual or entity.

## **13. ENFORCEMENT**

Failure to follow this policy exposes the Town to significant legal risks. Therefore, a Member's failure to follow this Policy may result in disciplinary action, including public censure or removal from the Board, as appropriate and permitted by law.

## **14. DISTRIBUTION**

This Policy shall be distributed to all current Members and any future Members upon accepting such position.