

Social Media: Web 2.0

Legal Issue Checklist



Major Sources of Law

- **First Amendment**
- **Brown Act (Open Meetings)**
- **Public Records Act**
- **Employment Law**
- **Use of Public Resources**

First Amendment

- **Public Forum Analysis**
- **Three Kinds**
 - Traditional
 - Designated
 - Limited

First Amendment

- **Public Forum Analysis**
 - Create a “limited” public forum for social media comments
 - A sub-category of a designated public forum that refers to a type of nonpublic forum that the government has intentionally ***opened only to certain groups or to certain topics.***
 - e.g., city council meetings

First Amendment

- **Once a limited forum is created, the agency must respect the lawful boundaries it has itself set**
- **The government may exclude speech when “reasonable” in light of the purpose served by the forum**
- **The government may not discriminate against speech on the basis of its viewpoint**

First Amendment

- **Establish Solid, Reasonable Rules by way of a Social Media Policy**
 - **Can't** delete comments because of viewpoint disagreement
 - **Can** delete comments that are off-topic, profane, encourage discrimination, include sexual content, commercial solicitations, or copyright infringement
 - **IF YOU SAY SO IN YOUR POLICY**

Brown Act

- **Serial Meeting Potential**
 - Facebook comment chains
 - Tweets and retweets

Public Records Act

- **Must a City maintain copies of web-based information?**

Employment Law

- **Employee Speech Rights**
 - Right to tweet as a private citizen on matters of “public concern” cannot be denied without adequate justification of harmful impacts on the efficiency of public services
 - Examples include illegal activity by the agency, misuse or waste of funds, and inefficiency

Use of Public Resources

- **Government Code Section 8314:**
 - It is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law.
 - Personal purposes has “incidental and minimal use” exception
 - How much Social Media is OK on Company Time?

Online Resources

- **Government on Facebook**
 - http://www.facebook.com/government?v=app_4949752878
- **Institute for Local Government**
 - <http://www.ca-ilg.org/socialmediapolicies>