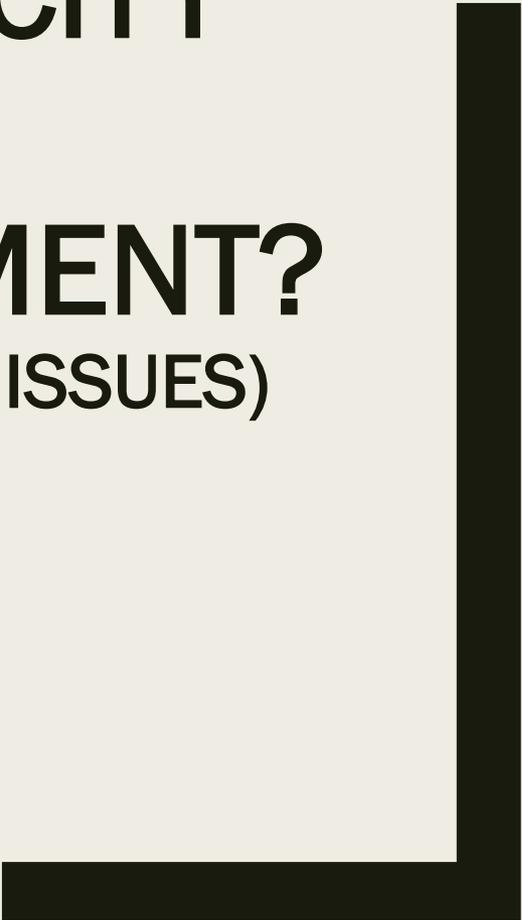




**WHEN CAN MY CITY
DELETE A
FACEBOOK COMMENT?
(AND OTHER SOCIAL MEDIA ISSUES)**

Heather M. Lockhart
Assistant City Attorney
City of Austin



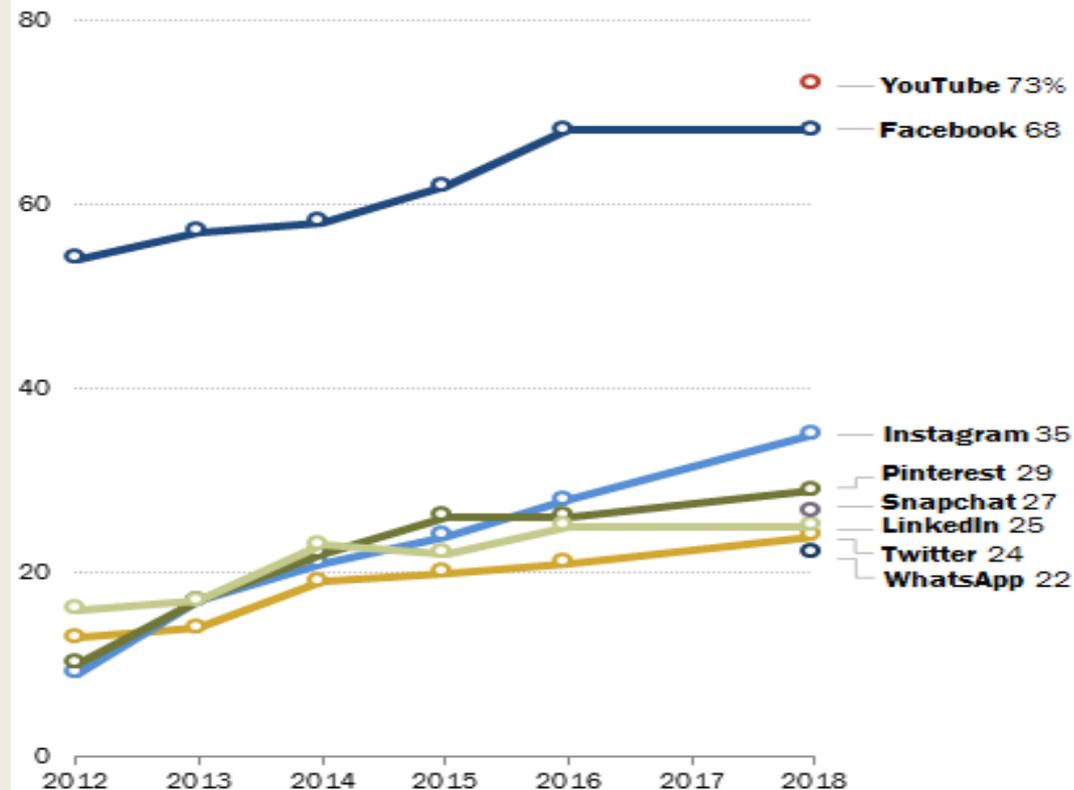
What is social media?!



Social Media Usage

Majority of Americans now use Facebook, YouTube

% of U.S. adults who say they use the following social media sites online or on their cellphone



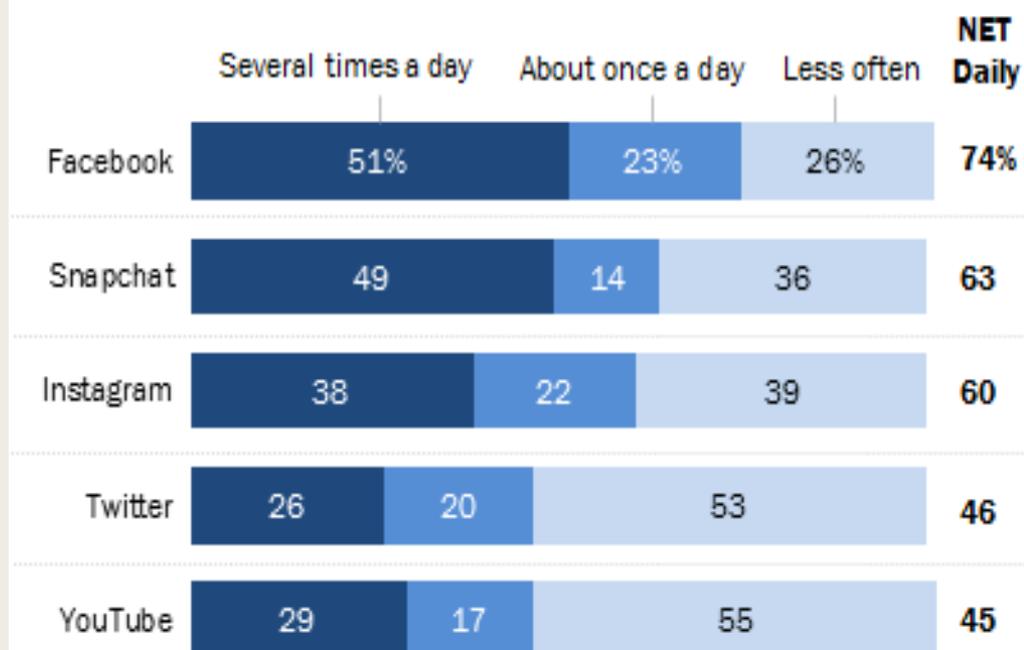
Note: Pre-2018 telephone poll data is not available for YouTube, Snapchat or WhatsApp.
Source: Survey conducted Jan. 3-10, 2018. Trend data from previous Pew Research Center surveys.

"Social Media Use in 2018"

PEW RESEARCH CENTER

A majority of Facebook, Snapchat and Instagram users visit these platforms on a daily basis

Among U.S. adults who say they use ____, the % who use each site ...



Note: Respondents who did not give answer are not shown. "Less often" category includes users who visit these sites a few times a week, every few weeks or less often.

Source: Survey conducted Jan. 3-10, 2018.

"Social Media Use in 2018"

PEW RESEARCH CENTER

What's the downside?



Is the City Facebook page our “official website?”

Sec. 551.056. ADDITIONAL POSTING REQUIREMENTS FOR CERTAIN MUNICIPALITIES, COUNTIES, SCHOOL DISTRICTS, JUNIOR COLLEGE DISTRICTS, DEVELOPMENT CORPORATIONS, AUTHORITIES, AND JOINT BOARDS. (a) **This section applies only to a governmental body** or economic development corporation **that maintains an Internet website or for which an Internet website is maintained.** This section does not apply to a governmental body described by Section [551.001\(3\)\(D\)](#).

(b) In addition to the other place at which notice is required to be posted by this subchapter, the following governmental bodies and economic development corporations must also concurrently post notice of a meeting on the Internet website of the governmental body or economic development corporation:

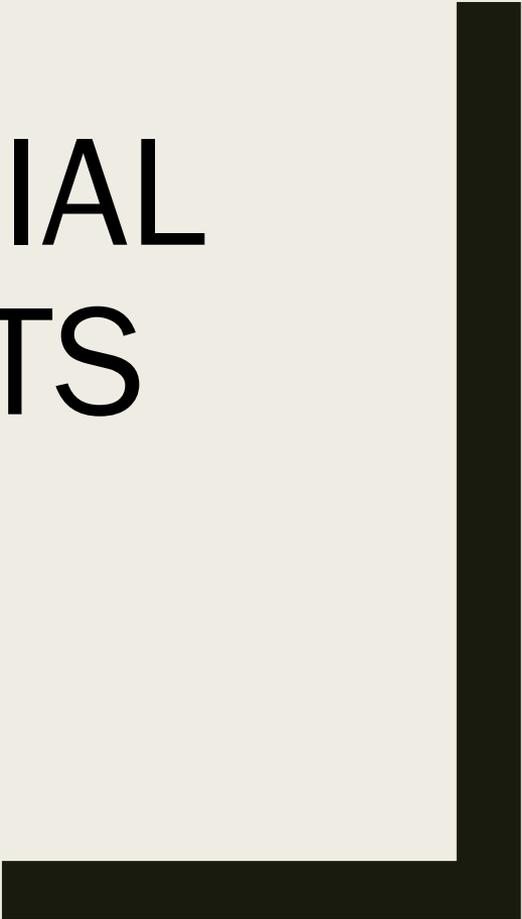
(1) a municipality

Public Information Act

- Only public information may be posted on social media
- PIA requests made through social media do not trigger PIA requirements
- “...any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.”

Record Retention

- Content posted is a state record subject to records retention requirements
- Example: Complaints received from the public by a governing body or any officer or employee of a local government relating to government employees, policies, etc. are to be retained until the Resolution or dismissal of complaint + 2 years



**CITIZEN SOCIAL
MEDIA POSTS**

Forum

- Public Forum
 - *Traditional*
 - *Designated (Limited)*

- Nonpublic Forum



Packingham v. NC

“Today, one of the most important places to exchange views is cyberspace, particularly social media, which offers ‘relatively unlimited, low-cost capacity for communication of all kinds,’ to users engaged in a wide array of protected First Amendment activity...”

“[T]he principal sources for knowing current events, checking ads for employment, **speaking and listening** in the modern public square...”





Why do we care about forum?!

- Public forum=Strongest 1st Am protection
- Determining the type of forum helps you determine **when** your city can delete a citizen's Facebook post
 - *Keep in mind, even if your policy allows you to delete a post, it **MUST BE RETAINED** (in accordance with schedule)*

Limited Public Forum

- Purpose: Make sure your “About” section contains the purpose of your FB page
- “All content and comments posted to this official City, Texas, Facebook site are subject to public disclosure laws. This includes private messages sent to this page. Posted comments do not necessarily reflect the views or position of the City.”

PETA v. Texas A&M

“Blocking these words serves to bar posts that are essential to PETA’s message... TAMU’s actions are **viewpoint-based and unreasonable**, which the First Amendments prohibits in both public and non-public forums... TAMU’s actions are **content-based and not narrowly tailored**, which the First Amendment prohibits in designated public forums, including, again, the comment section of TAMU’s Facebook page.”

Example:

“It sure seems like Councilmember A and Councilmember B have a conflict of interest with the purchase of this land for a new city hall”

Example:

“RAISE YOUR HAND IF YOU BUY VITAMINS, PROBIOTICS, OMEGAS etc at the health or grocery store!!! Will you swap those out with one of mine? If you don't love it, you can ask for your money back without sending a thing back and BAM. NO RISK! Money back and you have lost nothing!”

The image features two large, thick black L-shaped brackets. One is positioned in the top-left corner, and the other is in the bottom-right corner. They are oriented towards each other, framing the central text.

COUNCIL SOCIAL MEDIA POSTS

© Randy Glasbergen
glasbergen.com



**“Of course I know how to communicate
without a phone. I have an app for that!”**

Twitter Lists

AT&T Wi-Fi 8:51 AM 72%

< **Austin Council** Edit

Tweets **Members** Subscribers

 **Council Member Alt...** **Following**
@ALTERforATX
Official Account of City Council Member Alison Alter of District 10. Putting Community First! #ATXCouncil, @Alison_Alter

 **Sabino Pio Renteria** **Following**
@CM_Renteria
Austin City Council Member, District 3. Proudly serving East and South Austin. Austin Native, @LoyalForeverAHS, and @UTAustin.

 **Ann Kitchen** **Following**
@D5Kitchen
Ann Kitchen, D5 Council Member, Chairs Mobility Committee, CAMPO and CapMetro Board Member, and former assistant

Home Search Alerts Messages

Can I block this troll??

TROLL MAKE INTERNET MAD.
TROLL LIKE ANGER.
TROLL WANT PEOPLE AS
MISERABLE AS TROLL.





Donald J. Trump ✓

@realDonaldTrump

@realDonaldTrump blocked you

You are blocked from following @realDonaldTrump and viewing @realDonaldTrump's Tweets.



christine teigen ✓

@chrissyteigen

 Follow

After 9 years of hating Donald J Trump, telling him "lol no one likes you" was the straw

9:01 AM - 25 Jul 2017

  50,840  232,256



christine teigen 

@chrissyteigen



well well well we meet again

[@realDonaldTrump](#)



Tweet your reply

What Not To Do



Takeaways

- Adopt Social Media Policy
- Train Staff to Follow Policy
CONSISTENTLY
- Educate Your Councilmembers

Questions?

Please feel free to contact me:

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