

Employee Speech, Expression and Social Networking

1032.1 PURPOSE AND SCOPE

This policy is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the Department.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

1032.1.1 APPLICABILITY

This policy applies to all forms of communication including but not limited to film, video, print media, public or private speech, use of all internet services, including the World Wide Web, e-mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video, and other file-sharing sites.

1032.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of this department. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this department be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the San Leandro Police Department will carefully balance the individual employee's rights against the Department's needs and interests when exercising a reasonable degree of control over its employees' speech and expression.

All members shall also be familiar with the City's Social Media Applications Policy.

[See attachment: AP 1011 Social Media Applications Policy.pdf](#)

1032.3 SAFETY

Employees should consider carefully the implications of their speech or any other form of expression when using the internet. Speech and expression that may negatively affect the safety of the San Leandro Police Department employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties. Employees should therefore not disseminate or post any information on any forum or medium that could reasonably

San Leandro Police Department

San Leandro PD Policy Manual

Employee Speech, Expression and Social Networking

be anticipated to compromise the safety of any employee, an employee's family, or associates. Examples of the type of information that could reasonably be expected to compromise safety include:

- Disclosing a photograph and name or address of an officer who is working undercover.
- Disclosing the address of a fellow officer.
- Otherwise disclosing where another officer can be located off-duty.

1032.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT

To meet the department's safety, performance and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, on a matter of public concern):

- (a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the San Leandro Police Department or its employees.
- (b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the San Leandro Police Department and tends to compromise or damage the mission, function, reputation or professionalism of the San Leandro Police Department or its employees. Examples may include:
 1. Statements that indicate disregard for the law or the state or U.S. Constitution.
 2. Expression that demonstrates support for criminal activity.
 3. Participating in sexually explicit photographs or videos for compensation or distribution.
- (c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.
- (d) Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the employees of the Department. For example, a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.
- (e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the San Leandro Police Department.
- (f) Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Department

San Leandro Police Department

San Leandro PD Policy Manual

Employee Speech, Expression and Social Networking

for financial or personal gain, or any disclosure of such materials without the express authorization of the Chief of Police or the authorized designee.

- (g) Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of department logos, emblems, uniforms, badges, patches, marked vehicles, equipment or other material that specifically identifies the San Leandro Police Department on any personal or social networking or other website or web page, without the express authorization of the Chief of Police.
- (h) Accessing websites for non-authorized purposes, or use of any personal communication device, game device or media device, whether personally or department-owned, for personal purposes while on-duty, except in the following circumstances:
 - 1. When brief personal communication may be warranted by the circumstances (e.g., inform family of extended hours).
 - 2. During authorized breaks such usage should be limited as much as practicable to areas out of sight and sound of the public and shall not be disruptive to the work environment.

Employees must take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the employee (e.g., social or personal website).

1032.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or officer associations, employees may not represent the San Leandro Police Department or identify themselves in any way that could be reasonably perceived as representing the San Leandro Police Department in order to do any of the following, unless specifically authorized by the Chief of Police (Government Code § 3206; Government Code § 3302):

- (a) Endorse, support, oppose or contradict any political campaign or initiative.
- (b) Endorse, support, oppose or contradict any social issue, cause or religion.
- (c) Endorse, support or oppose any product, service, company or other commercial entity.
- (d) Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group or officer associations), is affiliated with this department, the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the San Leandro Police Department.

San Leandro Police Department

San Leandro PD Policy Manual

Employee Speech, Expression and Social Networking

Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized bargaining unit or officer associations, on political subjects and candidates at all times while off-duty.

However, employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 USC § 1502).

1032.5 PRIVACY EXPECTATION

Employees forfeit any expectation of privacy with regard to e-mails, texts or anything published or maintained through file-sharing software or any Internet site (e.g., Facebook, Twitter) that is accessed, transmitted, received or reviewed on any department technology system.

The Department reserves the right to access, audit and disclose for whatever reason any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by the Department. This includes the department e-mail system, computer network or any information placed into storage on any department system or device.

It also includes records of all key strokes or web-browsing history made at any department computer or over any department network.

The fact that access to a database, service or website requires a user name or password will not create an expectation of privacy if it is accessed through a department computer or network.

The Department shall not require an employee to disclose a personal user name or password for accessing personal social media or to open a personal social website; however, the Department may request access when it is reasonably believed to be relevant to the investigation of allegations of work-related misconduct (Labor Code § 980).

1032.6 CONSIDERATIONS

In determining whether to grant authorization of any speech or conduct that is prohibited under this policy, the factors that the Chief of Police or authorized designee should consider include:

- (a) Whether the speech or conduct would negatively affect the efficiency of delivering public services.
- (b) Whether the speech or conduct would be contrary to the good order of the Department or the efficiency or morale of its members.
- (c) Whether the speech or conduct would reflect unfavorably upon the Department.

San Leandro Police Department

San Leandro PD Policy Manual

Employee Speech, Expression and Social Networking

- (d) Whether the speech or conduct would negatively affect the member's appearance of impartiality in the performance of his/her duties.
- (e) Whether similar speech or conduct has been previously authorized.
- (f) Whether the speech or conduct may be protected and outweighs any interest of the Department.

1032.7 TRAINING


Subject to available resources, the Department should provide training regarding employee speech and the use of social networking to all members of the Department.

1032.8 RESCINDED POLICY

This policy rescinds San Leandro Operations Directive 10-03

Attachments

AP 1011 Social Media Applications Policy.pdf

<p style="text-align: center;">CITY OF SAN LEANDRO</p>  <p style="text-align: center;">ADMINISTRATIVE PROCEDURE</p>	AP-1011: SOCIAL MEDIA APPLICATIONS POLICY
	DATE ISSUED: 2/1/13
	DATE REVISED: 7/15/14
	APPROVED BY CITY MANAGER: <i>Chris Sepat</i>

I. APPLICABLE TO

All administrators of and content providers to social media applications managed or sponsored by the City, including City employees, contractors, consultants, volunteers, and users with the exception of certain law enforcement personnel for public safety purposes as determined by the Chief of Police, including but not limited to criminal investigations. This policy applies to City Councilmembers to the extent that Councilmembers use social media applications managed or sponsored by the City. This procedure does not apply to any of the above named individuals' use of social media applications for personal use or campaigns for elected office.

II. PURPOSE

A. To provide guidance to City employees, volunteers, consultants, and contractors ("Users") on the City's use of social media applications to promote the City, market City services and programs, and enhance the public's knowledge and use of City services. All employees, volunteers, consultants, contractors, and other authorized non-employees administering or managing social media applications on behalf of the City must adhere to this Administrative Procedure (which shall also be known as the "Guidelines") as well as all other applicable Administrative Procedures.

III. DEFINITIONS

Social Media refers to a communications medium that facilitates interaction and content creation through technology, either through software or other technological applications. Social media allows users to generate, organize, share, edit, comment and communicate to other users through open or shared networks on static and mobile computing and communications devices.

Users should be aware that all information posted to social media applications administered or managed by the City is public information, and is subject to disclosure under the California Public Records Act.

IV. GUIDELINES

- A. Use of City Electronic Communication Systems to post information or access social media applications, sites, or pages are subject to all applicable policies of the City regarding use of City computers, including Administrative Procedure AP-1010, Guideline for Employee Use of the Internet & Electronic Communication.
- B. Only the City Manager, Assistant City Manager, Department Heads, employees and authorized non-employees, with prior authorization from a Department Head, are permitted to post or generate content on social media applications, sites, or pages managed or sponsored by the City of San Leandro.
- C. Any and all information posted on social media applications created on behalf of or by the City and/or a City Department must:
 - 1. Directly pertain to the City of San Leandro, or to the particular City Department's operations or functions;
 - 2. Contain information that is freely available to the public and that is not made confidential by any policy of the City, or by local, state, or federal law;
 - 3. Comply with all applicable federal, state and local laws, rules and regulations. This includes copyright laws, records retention laws, California Civil Code section 3344, the Freedom of Information Act, the California Public Records Act, privacy laws, and employment laws;
 - 4. Be factual;
 - 5. Not include photographs or images of a featured minor without a verbal or written release from the minor's parent or legal guardian;
 - 6. Be managed so that language is not posted that is prohibited political activity, that is otherwise illegal, or that violates any other Federal, State, or City policy, code, regulation, or procedure;
 - 7. Not include comments referring to political campaigns, ballot measures, or other political issues unless authorized by the City Manager or his/her designee, and when so authorized, such comments shall be unbiased, factual, and for informational purposes only;
 - 8. Be managed so that postings, comments, or statements on social media applications that announce functions or events sponsored, endorsed by, or conducted by the City, another local public agency, the State, the United States government, or any other public safety agency are permitted. Such postings should be professional and edited to be typographically and grammatically accurate.

- D. Specific consideration shall be given to social networking applications, websites, or channels that permit and invite responsive posts, comments or messages by the public. Such interactive postings can benefit the City in that they provide a way for residents and other interested persons to express opinions or suggestions, and provide information or feedback on City programs, services, and events. It is important to note that responsive posts may contain links, pictures, and videos that must be reviewed to confirm compliance with this administrative procedure.

- E. City managed or sponsored social media applications, websites, or channels that allow responsive posting of comments or messages by residents, the public, or other interested persons or entities shall do so according to the following:
 - 1. The Department Head, or the employee authorized by the Department Head as responsible for monitoring any persons,' including members of the public's, responsive posts, comments, or messages to content generated by the City, must make a good faith attempt to post this Administrative Procedure so that it appears upon, within, or links directly to this Administrative Procedure, whether through a link to the City's website or the City's social media application's main page(this Administrative Procedure may, for example, be posted on the "About" tab of a Department's Facebook page).

 - 2. Each Department must publish, whether directly to the social media application or on the City's website that links to the social medial application, the following: (a) The purpose of the Department's use of the social media application or website (by, for example, stating the Department's purpose on the "About" tab of the Department's Facebook page); (b) if responsive posting, comments or messages are allowed by members of the public, then an invitation for such posts, comments, and messages germane to the purpose of the Department's application or website; and (c) a description of the kinds of posts, comments, images, videos, or messages that are objectionable. Please refer to Section IV.F below.

 - 3. The responsible employee monitoring posts, comments, images, videos or messages to content generated or posted by the City shall at all times use his/her best judgment in deciding whether or not to respond to responsive posts, comments, or messages. Engaging with any person that comments in an argumentative or offensive manner should be avoided.

 - 4. The social media application or page must provide a mechanism for the employee to remove comments, posts, images, videos or messages that violate this administrative procedure.

 - 5. The responsible employee must review the Department's social media application or page not less than once each workday to ensure compliance with these Guidelines. Work done in connection with the social media application or

page during non-work hours must be preapproved by the employee's Department Head. If a Department is unable to review a social media application or page at least once each workday, then the ability for comments or messages to post to the application or page should be disabled.

- F. Social media content, comments and messages containing any of the following will be removed:
1. Comments, posts, messages, images, or video not related to the purpose of the Department's use of the social media application or page, including hyperlinks to material that are not related to the discussion posted by the Department or the Department's purpose;
 2. Profane language or content;
 3. Content that promotes, fosters, or perpetuates discrimination on the basis of race, religion, color, national origin, gender, gender identification, sexual orientation, marital status, age, or physical or mental disability, or any other protected status;
 4. Personal attacks, insults, fighting words, language that exhibits bullying behavior, or language that threatens physical, emotional, or mental harm;
 5. Sexual, obscene, or lewd content, links to sexual content, or any content that would violate the City's Harassment Policy¹;
 6. Commercial solicitations, promotions, requests for product or service endorsements, or spam;
 7. Conduct or encouragement of illegal activity;
 8. Content that violates a legal ownership interest of any other party;
 9. Information that may compromise public safety or health;

¹ In reviewing such content, staff should consider the following, also known as the "Miller Test," as provided by the United States Supreme Court in *Miller v. California* (1973), 413 U.S. 15: a) Whether the average person, applying contemporary community standards (not national standards, as some prior tests required), would find that the work, taken as a whole, appeals to the prurient interest;

b) Whether the work depicts or describes, in a patently offensive way, sexual conduct or excretory functions specifically defined by applicable state law;

c) Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

10. Content that violates Federal or State laws or regulations, or the City's Municipal Codes;
11. Content that does not clearly provide, or is deliberately deceptive as to what person or which organization is the author or origin of the comment or responsive posting.

V. PROCEDURE

- A. If a Department wishes to use a social media application or create a social media page, the Department Head must obtain City Manager approval.
- B. City use of any social media site and the content generated thereon are subject to the California Public Records Act. Content posted on City managed social media applications or pages are public records. Content shall be retained according to the user agreement of the social media site. If there is no provision for records retention in the user agreement, then the City's records retention policy for regular correspondence applies.
- C. Where possible, social media applications or pages should link back to the official City of San Leandro website. The official City of San Leandro website will be the City's primary web presence.

2299883.1