

**RESOLUTION NO. 2220-19**

**A RESOLUTION OF THE CITY COMMISSION OF WINTER PARK, FLORIDA, REPEALING AND REPLACING THE POLICY GOVERNING CITY USE OF SOCIAL MEDIA AND EXTERNAL INTERNET TO UPDATE AND CLARIFY THE CITY'S POLICIES GOVERNING CITY USE OF SOCIAL MEDIA; PROVIDING FOR CONFLICTS AND AN EFFECTIVE DATE.**

**WHEREAS**, on or about October 26, 2009, the City of Winter Park ("City") adopted that certain Policy Governing City Use of Social Media and External Internet (the "2009 Policy"); and

**WHEREAS**, the City wishes to update and clarify the 2009 Policy and to add provisions to ensure consistency with the City of Winter Park brand and to facilitate compliance with the public records laws, Sunshine Law, and other laws.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF WINTER PARK, FLORIDA, AS FOLLOWS.**

**SECTION 1. Recitals.** The above recitals are true and correct and are incorporated as part of this Resolution.

**SECTION 2. Policy Adoption.** The City hereby adopts the Policy Governing City Use of Social Media, attached hereto as Exhibit "A." The 2009 Policy that was adopted on or about October 26, 2009 is hereby repealed in full, and replaced with the policy attached hereto as Exhibit "A."

**SECTION 3. Conflicts.** In the event of a conflict between this Resolution and any other resolution of the City, this Resolution shall control.

**SECTION 4. Effective date.** This Resolution shall become effective immediately upon adoption by the City Commission of the City of Winter Park, Florida.

**ADOPTED** this 10<sup>th</sup> day of June, 2019, by the City Commission of the City of Winter Park, Florida.

ATTEST:

CITY COMMISSION  
CITY OF WINTER PARK

\_\_\_\_\_  
Cynthia Bonham, City Clerk

\_\_\_\_\_  
Mayor Steve Leary

## **City of Winter Park Policy Governing City Use of Social Media**

### **1. Objectives/Purpose:**

The City of Winter Park (“City”) Policy Governing City Use of Social Media (“Policy”) functions to provide policies and procedures for City utilization of social media services to ensure consistency with the City’s brand and message. This Policy is narrowly tailored in recognition of the City’s compelling and significant interests, which includes but are not limited to, ensuring compliance with federal, state, and local law, Florida’s public records law and the Florida Sunshine Law, to promote and maintain an efficient workplace and work environment for City business, and in the City’s interests of providing services that benefit the public health, safety, and welfare. Adequate and ample alternative channels to convey various City-related commercial or personal messages exists that are not limited or affected by this Policy, including but not limited to, speaking during public comment portions of City meetings, posting or creating content on websites or social media services that are not City social media accounts, or using alternative means of communication that do not involve City websites or social media services. Such alternative methods are reasonable for the affected speaker to communicate directly to his or her intended audience.

This Policy is also intended to function as a guide and clear communication to users of the City’s social media services of the best lawful practice and operational realities in utilizing City social media services when used for purposes relating to or perpetuating City business. The City intends to operate its social media applications in two different formats relating to the government speech doctrine versus the creation of a designated or limited public forum. For City-utilized social media services where the City has disabled the ability of the public to comment or post, alternatively, in the event such disabling is unavailable, removed or deleted public postings or comments, or the City has otherwise communicated or posted a statement that the City is not seeking or soliciting public comment or postings, then the City-utilized social media services shall function solely as an expression of the City’s government related speech and viewpoint. In contrast, in circumstances where the City actively solicits or encourages public comments or postings from the public and has not otherwise disabled (or deleted public comments from a City-utilized social media service where disabling comments is unavailable), then the City-utilized social media services shall be construed as creating a designated or limited public forum in accordance with the topical and expressive parameters provided in this Policy. The City retains the exclusive right to treat City-utilized social media services as designated or limited public forum, or alternatively, as a forum for the sole expression of the City’s government speech alone at any time and without notice. Such conversion or modification of a traditional or limited public forum to a forum only allowing the City’s government speech may occur through disabling all comments on the particular social media service, or if the ability to disable comments is unavailable, through the City’s clear communication that public comments or posts are not solicited, will no longer be accepted, and will be deleted as soon as practicable under the circumstances. At all times, however, utilization of City social media services is intended primarily as a means for the City to express its own content and viewpoint consistent with the government speech doctrine, to inform and educate the public, to efficiently and timely perform City-related tasks, and to otherwise provide an alternative avenue for the City itself to directly communicate to the public.

**2. Authority/Effective Date:**

This Policy is approved by the City Commission of the City of Winter Park on \_\_\_\_\_, 2019.

**3. Direction/Control:**

The City’s Communication Department Director (subject to the direction and control of the City Manager) shall primarily oversee and administer the City’s policies for the use of social media services.

**4. Policies:**

**A. Definitions:**

- (1) “Content Managers” are the officers, employees, or agents of the City assigned responsibility for posting and/or maintaining City content on a social media service.
- (2) “Social media services” are websites, web services, platforms or applications offered by non-City third-party entities that enable users to create and share information and content or to participate in social networking.

**B. General Requirements:**

- (1) Each City-utilized social media service must be set up and approved by the Communications Department, which shall review each based on the following and other relevant considerations:
  - i. Determining whether the social media service allows public comments or posts to be turned off, modified, or deleted. If the City utilizes a social media service that does not allow public comments or posts to be turned off or deleted, then the City may implement certain controls as necessary in accordance with subparagraph 4.E. of this Policy;
  - ii. Ensuring that the City is allowed and permitted by the social media service to allow the City to retain editorial control of content in accordance with this Policy and the designated or limited public forum intended to be created by the City thereon; and
  - iii. The concept, platform, audience, and marketing plan for the social media service including the relevant terms of service, if any, relating to same.

(2) Each City-utilized social media service shall be used primarily as a means for the City to release its own City messages and to engage in City-related speech and discussion of the City's own viewpoint and content. The City shall use such social media services to promote the City and City services, job opportunities, City announcements, City events and advertising for same, and other matters that support the interests of the City and the citizens, visitors, and businesses of the City.

(3) The Communications Department shall set up and maintain the main administration account for each social media service in conjunction with other relevant City departments as determined by the Communications Department to create relevant City account information, usernames, passwords, and the like. No personal information shall be utilized in setting up such accounts, unless required by the service or site policy and the ability to obfuscate such information is provided.

(4) The Communications Department may establish such City accounts on social media services even if the City does not currently plan to utilize such services in order for the City to reserve same for City utilization in the future.

(5) All City-utilized social media services shall clearly indicate that they are maintained by the City, shall provide relevant City contact information, and shall link to the City's official website for forms, documents, online services, and other information necessary to conduct business with the City. Additionally, all City-utilized social media services shall prominently display as far as practicable that such services contain content relating to the City's speech and viewpoint.

(6) No personal information about a City officer, employee, or other agent shall be displayed on a City-utilized social media service used by the City, unless approved by the City Manager or his/her designee. City posts and content shall not express the personal opinions of any City officer, employee, or other agent, and shall be limited to expressing the viewpoint and speech of the City or otherwise advancing the City's interests.

(7) The City's utilization of social media services shall comply with all provisions of federal and Florida law, resolutions and ordinances of the City, policies and directives issued by the City Manager or other authorized City officer or department, and the relevant terms of service of such site, service, or application.

(8) The Communications Department must have full administrative rights to review all City information and City generated content. Notwithstanding the preceding, the Communications Department Director, City Manager, or the designee of the City

Manager may delegate the responsibility of reviewing content to other City departments as deemed appropriate.

(9) The Communications Department shall review the City's use of social media services at least on a yearly basis to ensure that such meets or exceeds the City's policies, that the use and function of the services meet the needs of the City and its residents, businesses, and visitors, to ensure that account information is kept current and updated, and other relevant considerations. The City shall retain the right to terminate the use of any service at any time and without notice. Additionally, the City shall retain the right to redefine permissible content, comments, or postings at any time and without notice or to cease allowance of public comment or postings at any time and without notice.

(10) The requirements set forth in this Policy apply regardless of whether the computer or electronic device utilized for City-related content or postings on social media services are personally owned by a City officer or employee or other individual where applicable and relevant. Further, the use of personal computers and other electronic devices for communicating or posting on behalf of the City to City-utilized social media services utilizing the City's account credentials may subject such devices to inspection pursuant to Florida's public records law and/or the Sunshine Law.

### **C. Public Records Law Considerations:**

(1) Any post made by a City officer, employee, or other City agent, or by a member of the public, to a City-utilized social media service may constitute a public record pursuant to Chapter 119, Florida Statutes. Content managers shall maintain an archive of all posts, content, and other submissions made to the City's social media services, and shall take all actions necessary to comply with the public records law, including the retention schedules relating to same. For City-utilized services that allow posts, comments, or submissions from the public, the statement described in subparagraph 4.E.(4) of this Policy shall be displayed as allowable by the social media service.

(2) City-utilized social media services are not the appropriate channel for the City's receipt of public records requests, and any post purporting to make a public records request to the City should be removed. Notwithstanding the preceding, any public records request purported to be made upon any City-utilized service shall be promptly forwarded to the City Clerk.

(3) Where appropriate, transitory, inappropriate, or non-germane posts or comments and other electronic communications, posts or comments made to the

City's utilized social media services by the City and by third parties should be removed or deleted as quickly as is reasonable and allowable under the public records laws and the record retention schedules established by state regulations. The existence of such content, comments, or posts for a specific period of time shall not function or be construed as the City's waiver of this Policy, in whole or in part, nor shall it function or be construed as the City's implied or presumed intent to expand the nature of the designated or limited public forum as set forth herein.

(4) Content managers are encouraged to consult with the City Communications Department Director and the City Attorney if they have questions regarding compliance with the public records law, the Florida Sunshine Law, or this Policy.

#### **D. Florida Sunshine Law Considerations:**

(1) The City strongly discourages any post, comment, or content to a City-utilized social media service by a member of any board, commission, or advisory committee of the City (hereinafter "Board Member") regarding any matter currently pending or which may foreseeably come before the Board Member's board, commission, or committee. In no event should a Board Member respond to a post by another member of such board, commission, or committee on any City-utilized service where such post, comment, or content relates to any matter pending before such board, commission, or committee, or which may foreseeably come before such board, commission, or committee.

(2) Content managers shall not post information or content to a City-utilized social media service that reflects a personal statement made by or a personal position of a Board Member regarding a matter before or which may foreseeably come before the Board Member's board, commission, or committee, in order to avoid facilitating communications between Board Members, to prevent the City's services from failing to convey the positions, viewpoint, and speech of the City, and to otherwise avoid a violation of this Policy.

(3) Board Members and content managers are encouraged to consult with the City Communications Department Director and City Attorney if they have questions regarding compliance with the Florida Sunshine Law or this Policy.

#### **E. Public Participation:**

(1) If the City elects to allow public comment or participation upon City-utilized social media services, such public comment or participation shall be designated or limited to comments, posts, and communications which are germane, topical, and relevant to the City's speech and viewpoint communicated thereon. Accordingly, content editors may remove content, comments, and postings from the public of the types listed below, which are determined by the City to be outside the parameters and established boundaries of the City's designated or limited public forum:

- i. Comments not topically related to or germane to the particular item being commented upon;
- ii. Comments that are inconsistent with the City's purpose in allowing public comment upon a particular City-utilized social media service;
- iii. Profane language or content, including obscenity, pornography, and sexual content or links to sexual content;
- iv. Solicitations of commerce;
- v. Defamation, libel, or slander;
- vi. Harassing or discriminatory speech relating to any protected class under the Fifth and Fourteenth Amendments, including but not limited to, speech that discriminates on the basis of race, gender, religion, national origin, sexual orientation, disability, or age. Harassing speech may also include persistent and unwelcome communications to or about the City, City employees, or City elected or appointed officials, which is utilized to deliver direct or perceived threats of removing tangible work benefits of the subject of or recipient of such communications or that creates a hostile work environment in the City;
- vii. Fighting words;
- viii. True threats;
- ix. Extortion or other speech in violation of federal or state law;
- x. Speech or communications in violation of Florida or relevant federal ethics or gift laws;
- xi. Speech or communications that reveal protected financial information, confidential health information, or that is in violation of the applicable exemptions, exceptions, or confidential provisions of the Florida Sunshine Law;
- xii. Electronic communication harassment or cyberstalking;
- xiii. Speech or communications that present a clear and present danger of immediate lawless action or speech or communications that encourage illegal activity;
- xiv. Speech or communications in violation of any copyright, trademark, or trade secret federal or Florida law;

xv. Information that may tend to compromise the safety or security of any individual or of the public;

xvi. Speech or communications which violate the terms of service of the City-utilized service; and/or

xvii. Any other unprotected speech or communications in accordance with federal or Florida law.

(2) To the extent that the City invites or solicits public posts, comments, or submissions to a City-utilized social media service, if an individual user makes a post, comment, or submission described under subparagraph (1) above, a content manager may turn off or otherwise disable the ability of such user to post or may otherwise block all future posts by such user as may be appropriate. Further, in accordance with this Policy, a content manager may disable all posts and submissions from the public generally and without notice consistent with this Policy. In the event that such City-utilized social media services do not allow all posts and submissions from the public generally to be disabled, the City reserves the right to remove and delete comments at the City's convenience and as soon as practicable under the circumstances in order to cease operations or communications that may be related to any City designated or limited public forum. To the extent the City disables public posts, comments, or submissions to a City-utilized social media service or elects to otherwise not allow posts and submissions in accordance with this subparagraph, then such City-utilized social media service shall not be intended or construed as a designated or limited public forum, but instead shall constitute government speech such that all City communications, posts, or submissions function as the viewpoint and communications of the City itself. The City retains the exclusive right to treat City-utilized social media services as designated or limited public forum, or alternatively, as a forum for the expression of the City's government speech alone at any time and without notice.

(3) A content manager shall not remove a public post, comment, or submission not described under subparagraph (1) above based upon the viewpoint or content expressed in such post, comment, or submission.

(4) The following statement shall be prominently displayed to the fullest extent practical and permissible on all City-utilized social media services:

Any post, communication, or submission to this website, account, application, or service, may be removed at the sole discretion of the City of Winter Park ("City") in accordance with the City's Policy Governing City Use of Social Media ("Policy"), and the City reserves the right to revoke participation or content posting rights hereon at any time and without notice or otherwise terminate the operation of any designated or limited public forum created therein. Pursuant to Florida law, any post, submission, or communication may constitute a public



record under chapter 119, Florida Statutes, which may require the City to archive and otherwise make such post, submission, or communication available for public inspection. This website, application, account, service and any postings or communications thereon are not monitored for public records requests, questions, notice, or any other requests from the public, and all participants should not expect any response from the City. Should you desire to make a public records request, please direct such request to the City Clerk's office. By submitting any post or content to this site, application, or social media service, you expressly consent to the copying, use, and disclosure by the City of any such post or content at the City's discretion and waive all copyright, trademark, and other rights you may have in such post, content, or communication. You further agree to indemnify and hold harmless the City from and against any and all fees, costs, fines, penalties, lawsuits, claims, damages, attorneys' fees, and any other adverse matters caused by or relating to your posting of any content to which you do not hold legal rights, including copying, trademark, or other legal rights.

(5) The City does not intend nor should this Policy be construed as creating any right or expectation in members of the public relating to any active participation or expression on City-utilized social media services.

## **5. Use of Private Social Media Services:**

City Commissioners, Board Members, and City employees are advised that posting information relating to city business on personal social media services may result in the creation of public records and impart legal obligations individually upon them pursuant to the Public Records Act. What constitutes city business for Public Records Act purposes can be complex and may be different depending on the scope of City duties of the individual making the social media post. To the extent City Commissioners and/or Board Members use their private social media accounts to post city business related information, the Communications Department may assist City Commissioners and/or Board Members in archiving such social media post for Public Records Act compliance purposes. City Commissioners and Board Members should not use social media services to have communications amongst other members of their same commission, board, or committee that violate the Florida Sunshine Law.

Notwithstanding the preceding, this Policy otherwise does not apply to personal utilization of social media services as this Policy is limited in application to City-utilized accounts for services as set forth herein. City Commissioners, Board Members, and City employees are encouraged to contact the City's Communications Department Director or City Attorney with questions relating to City related business or topics as applied to personal accounts for social media services.

## **6. Additional Legal Matters**

### **A. Severability/Conflicts:**

If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Policy is declared unconstitutional by valid final judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part of this Policy. Should this Policy conflict with the City Charter or any City ordinances, or parts thereof, then those provisions shall apply but only to the extent of such conflict.

**B. Disclaimer/Non-Waiver:**

The City disclaims all liability and shall not be responsible for any effect, injury, damage, claim, action, or demand to the fullest extent permissible under law relating to or arising from a post or submission to a social media service by any member of the public, the City's removal of or failure to remove a post or submission by a member of the public, the City's failure to follow or enforce this Policy in every circumstance, or any other matter related to this Policy. The City further disclaims all liability and shall not be responsible for content or expressions that are posted by City employees or agents not acting in the course of their City duties with authorization as outlined in this Policy. Failure to comply with this Policy or any portion thereof by the City shall not create any expectation or interest in any private, public, or other right of action against the City, its elected or appointed officials, officers, employees, personnel, or agents. By posting information, content, or any expressions to any City-utilized social media service the City does not waive any legal right, protection, privilege, or immunity, including but not limited to, copyright, trademark, and/or sovereign immunity, and the City retains all rights to such information, content, or any expressions to the fullest extent permissible under federal and Florida law.