

Social Media: The Good, The Bad, and the Legalities

Speakers:

- **Matt Bach**, Director of Communications, Michigan Municipal League
- **Steve Baker**, Mayor Pro Tem, Berkley
- **Steven Mann**, Principal, Miller Canfield



MICHIGAN MUNICIPAL LEAGUE
CONVENTION 2017
SEPTEMBER 13-15, 2017 - HOLLAND



Session Summary

- **Matt Bach** – Social media overview and tips
- **Steve Baker** – Personal experiences from the trenches
- **Steven Mann** – Legal issues surrounding social media



Social Media Overview & Tips

by Matt Bach



MICHIGAN MUNICIPAL LEAGUE

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Questions for you:

- Who here is on Facebook?
- Your community on Facebook?
- What about Twitter?
- LinkedIn? Google+?
- Instagram? Flickr?
- Other?

About Me

- 25+ years media experience:
 - 18 years as a journalist at newspapers Greenville, Howell and Flint (also spent time in Grand Rapids, Alpena and Cass City)
 - Nearly a decade in public relations, media relations, communications – Flint CVB, MML
- Director at the League for 8 years
- Focusing on Media Relations and Communications
- Increase footprint of the League and League members



My Social Media Experience

Thanks to Facebook, Flint Journal's Matt Bach leaving for new job with Flint Area Conventions and Visitors Bureau

By Matt Bach | Flint Journal
Follow on Twitter
on February 02, 2009 at 2:30 AM, updated February 02, 2009 at 2:33 AM



Matt Bach,
Flint Journal
columnist
• [Read more by him](#)

The post was short and sweet: "Matt is looking for a job, will work for money."

It was supposed to be another funny post on Facebook (an online social network), but at the same time I was looking for something new professionally.

Much to my surprise, I had a job offer -- within 48 hours.

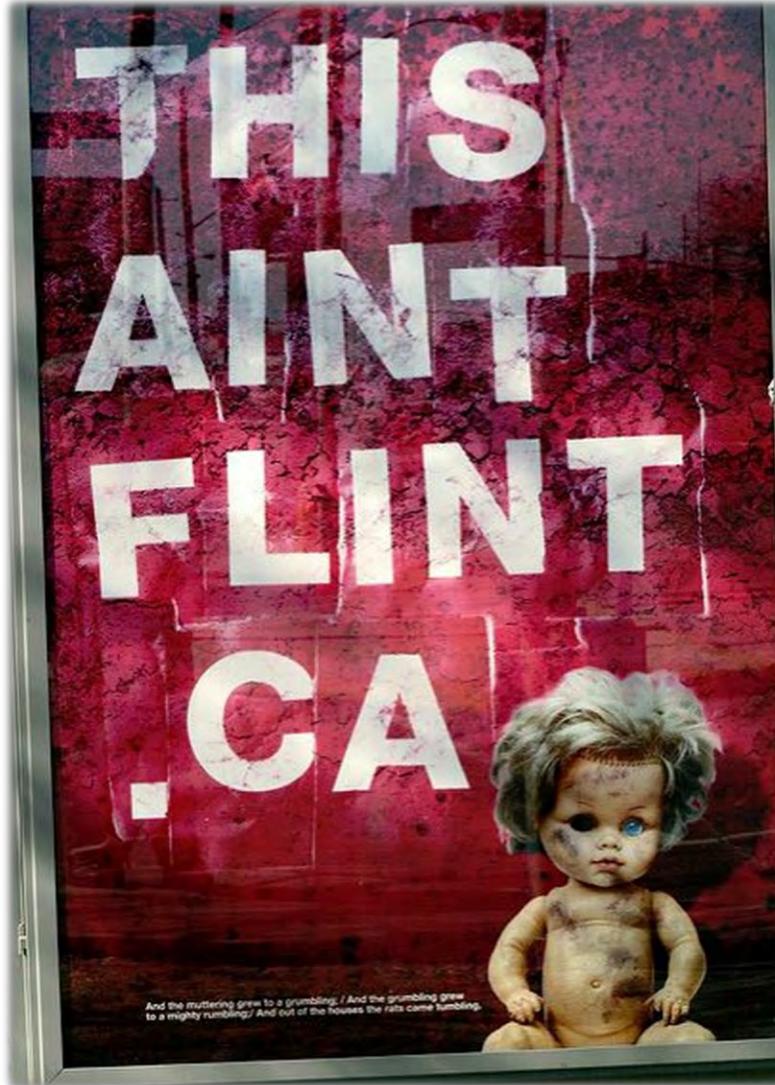
Hard to believe, but it's true.

**READY TO CHECK OUT?
WE PROMISE
LOW PRICES**

MOST READ

-  This Detroit home up for auction looks like a great fixer-upper, but there's one problem
-  More than a cool name, WR Eddie McDoom ready to bring speed and precision to Michigan
-  Lions DE Ezekiel Ansah getting love from J.J.

The Power of Social Media



RAGAN'S
PR Daily

Home Social Media Media Relations Crisis Marketing Writing & Editing Events Training

Social media maven jump-starting PR in hard-times Flint

By Lindsey Miller | Posted: January 25, 2011

Print E-mail

0 0 0 0
Twitter Like in Share G+1 Pin it

Keying on Facebook, he takes on all comers in burnishing image of GM's birthplace

The new PR manager and social media guru for the Flint Area Convention and Visitors Bureau has a tough job.

Already facing the mounting problems with the auto industry, Matt Bach recently fired back at an Ontario radio station that had launched a "This Ain't Flint" advertising campaign. The video focused on Flint's problems — in 1989! — in order to highlight the relative success of greater Ottawa today.

The Flint public relations effort has been an uphill climb, Bach says, ever since Michael Moore released the 1989 documentary *Roger & Me* about General Motors' Flint-area plant closings in the mid-1980s, which put tens of thousands out of work.

"Part of my job is to shape public perception," Bach says. "If you tell anyone you're from Flint they say, 'Oh, *Roger & Me*, Michael Moore, skinning rabbits.' A portion of the film features a Flint resident who ekes out a living selling rabbits — as pets or as cheap food.

"Unfortunately that's what we're known for," Bach says, "and it's a 20-year-old movie, but that's the stigma that's attached to us. So, my job is to change perceptions one blog, one Web site, one Internet comment at a time."

Most of us don't have to combat perceptions that are decades deep, but Bach's initial efforts in social media, from blogger interaction to Facebook to Twitter, teach some lessons in transparency that can apply to anyone with a brand to maintain.

MML Uses of Social Media

Our Facebook, Twitter and other social media sites feed our webpage.

Home About Results! COMMUNITY Excellence Awards Entries Rules MML Home

Congratulations to the 2016 Community Excellence Awards Winner - Beaverton Activity Center!

In 2011, a group of Beaverton community members came together to ask themselves this question: Do we want to save a community jewel and create something amazing to serve this low to moderate income and surrounding community? The answer was an overwhelming YES! To see how they transformed an old school into a community HUB of activities, click here.

The Community Excellence Award is the League's most prestigious community award. Project entries must focus on one of the four categories of the League's Partnership for Place Agenda.

We use it to promote our programs, such as CEAs online voting component.

Michigan Municipal League @MMLLeague

Michigan Municipal League added 4 new photos. Published by Matt Bach 19 · 10 hrs

Thank you for a great event tonight talking municipal finance in Flint with U.S. Congressman Dan Kildee, Detroit Free Press Editorial Page Editor Stephen Henderson, Michigan Senate Minority Leader Jim Ananich, Pontiac Mayor Deirdre Waterman, Ypsilanti Mayor Pro Tem Lois Allen-Richardson, League CEO and Executive Director Dan Gilmartin and League COO and Associate Executive Director Anthony Minghine. #SaveMicity Learn more at [savecity.org](https://www.flickr.com/photos/michiganic.../albums/721517675610914786). View more photos here: <https://www.flickr.com/photos/michiganic.../albums/721517675610914786>

Share your opinion about Michigan Municipal League!

APPS

PHOTOS

VIDEOS

MORE CONTACTS (65)

FUNDING FOR THE FUTURE MICHIGAN IN MOTION PLACE FOR TALENT STRENGTH IN STRUCTURE

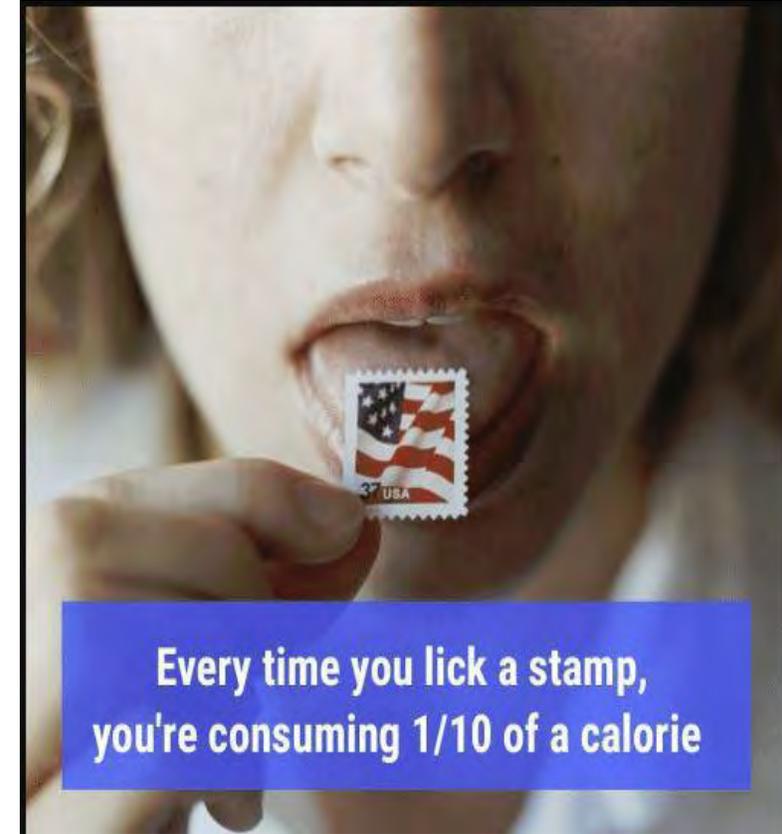
The League

9,174 Tweets 1,455 Followers 1,165 Following 645 Likes 1 List

Save Micity

Social Media: Fun Facts – Part 1

- Facebook adds 500,000 new users **EVERY DAY!**
- 50% of world population is under age 30
- Today's college students have never licked a stamp
- 53% of millennials would rather lose their sense of smell than their technology
- 93% of all buying decisions are influenced by social media

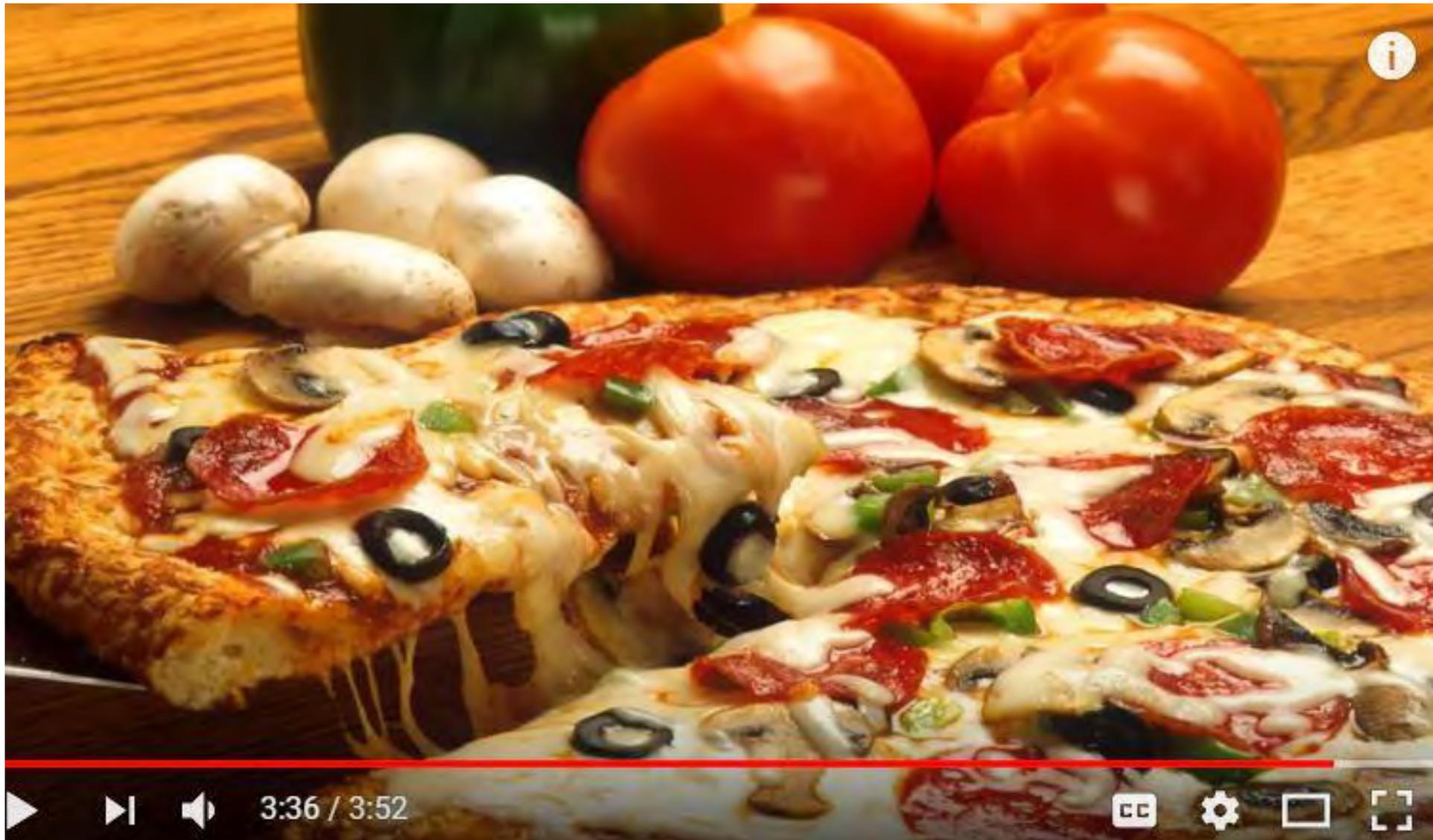


Social Media: Fun Facts – Part 2

- By population, Facebook would be the largest country in the world
- What is the name of Twitter's bird logo?
- Optimal times people use Facebook:
 - 3 p.m. Wednesdays
 - 1-4 p.m. Thursdays and Fridays
 - Noon-1 p.m. Saturdays and Sundays
- More people own a mobile phone than a tooth brush
- 1 in 3 marriages start online
- What food is posted the most on Instagram?



Yum!



Social Media: Why Do It?

- **Cheap/Free**
- **Easy to use**
- **Offers Two-Way Communication, give and take (good and bad)**
- **Effective at spreading news to larger more diverse audience**
- **Fill the gap created in decline of local, traditional news media**
- **Can use it to create and lead the news**

Social Media: Steps to Success

Step 1: Decide what you want to accomplish?

At the League our goal is to advance the message that placemaking is an economic driver and that our method of funding municipalities is broken.

Step 2: Pick your platforms

Most impactful ones are currently Facebook and Twitter. The League also uses flickr, Vimeo and to a lesser extent Google+, LinkedIn, Pinterest

Step 3: Establish policies and expectations

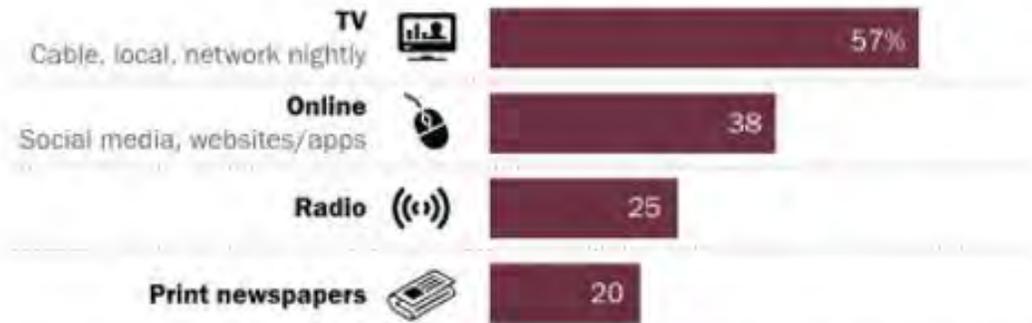
Step 4: Be consistent/stay relevant:

- Post photos and graphics!
- Tweet at least once a day
- Post on Facebook daily

Where Do You Get Your News?

About four-in-ten Americans often get news online

% of U.S. adults who often get news on each platform



% of each age group who often get news on each platform

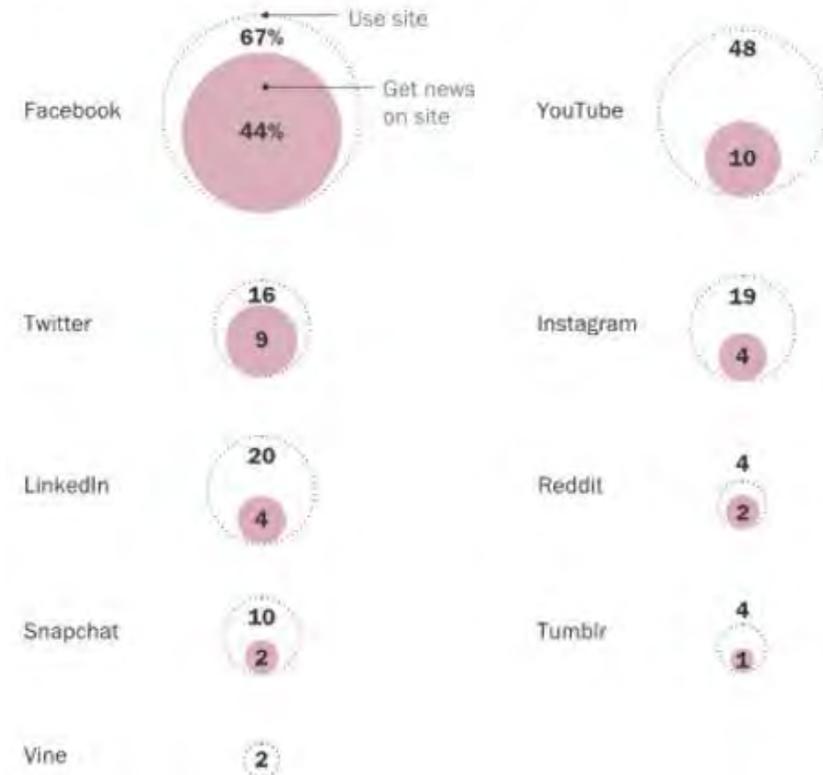
	18-29	30-49	50-64	65+
TV	27%	45%	72%	85%
Online	50	49	29	20
Radio	14	27	29	24
Print newspapers	5	10	23	48

Note: Just 1% said they never got news on any platform (not shown).
 Source: Survey conducted Jan. 12-Feb. 8, 2016.
 "The Modern News Consumer"

PEW RESEARCH CENTER

Social media news use: Facebook leads the pack

% of U.S. adults who...



Source: Survey conducted Jan. 12-Feb. 8, 2016.
 "News Use Across Social Media Platforms 2016"

PEW RESEARCH CENTER

Question:

Do you want to be the one providing the information to your residents and community or do you want someone else doing it for you, from their own perspective?

YOU need to be the information leader!!

Decline of Traditional Media = Opportunity

24 of the 25 largest newspapers are experiencing record declines in circulation. This is a chance for us!



As we know, newspapers are in a dire state. Has that affected your reporting on this (Flint water crisis)?

This is my 20th year. I tell people that when I first came to work at The Flint Journal, we had five people working full-time in our library and now we have about that many trying to cover the news...

- Ron Fonger, mlive.com/Flint Journal reporter

Create your own news!

SaveMI City

The Issue Research Resources Blog Media Press Kit

Congressman Dan Kildee, League Host Informative Session on Municipal Finance

October 26, 2016 Matt Bach Uncategorized 0 Comments



Thank you to our Save Michigan City panelists – (from left) Stephen Henderson of the Detroit Free Press, Congressman Dan Kildee, Pontiac Mayor Deirdre Waterman, Ypsilanti Mayor Pro Tem Lois Allen-Richardson, the League's Dan Gilmartin and Michigan Senate Minority Leader Jim Ananich.

(View more photos here)

We had a great event Tuesday evening talking in Flint about the state's broken system over the way it funds and supports Michigan's communities.

About 70 community leaders, business officials and residents attended the Save Michigan Cities event that was organized by the Michigan Municipal League. Event participants were U.S. Congressman Dan Kildee, Detroit Free Press Editorial Page Editor Stephen Henderson, Michigan Senate Minority Leader Jim Ananich, Pontiac Mayor Deirdre Waterman, Ypsilanti Mayor Pro

Tem Lois Allen-Richardson, League CEO and Executive Director Dan Gilmartin and League COO and Associate Executive Director Anthony Minghine.

Minghine kicked off the event with a discussion about the broken system and ways to fix it. He explained and how the state has diverted more than \$7.5 billion in revenue sharing dollars from Michigan communities since 2002. Minghine showed data illustrating that Michigan is the only state in the nation to invest less in its communities between 2002 and 2012. (View the chart here: <http://www.savemicity.org/wp-content/uploads/2016/03/census.pdf>)

#saveMIcity on TWITTER



@jimananich @SHendersonFreeP #mileg

The League Retweeted

Matt Bach @mattbach

Blog: @RepDanKildee @MMLLeague host #savemicity event in #Flint @DPGilmartin savemicity.org/congressman-da... @jimananich @SHendersonFreeP

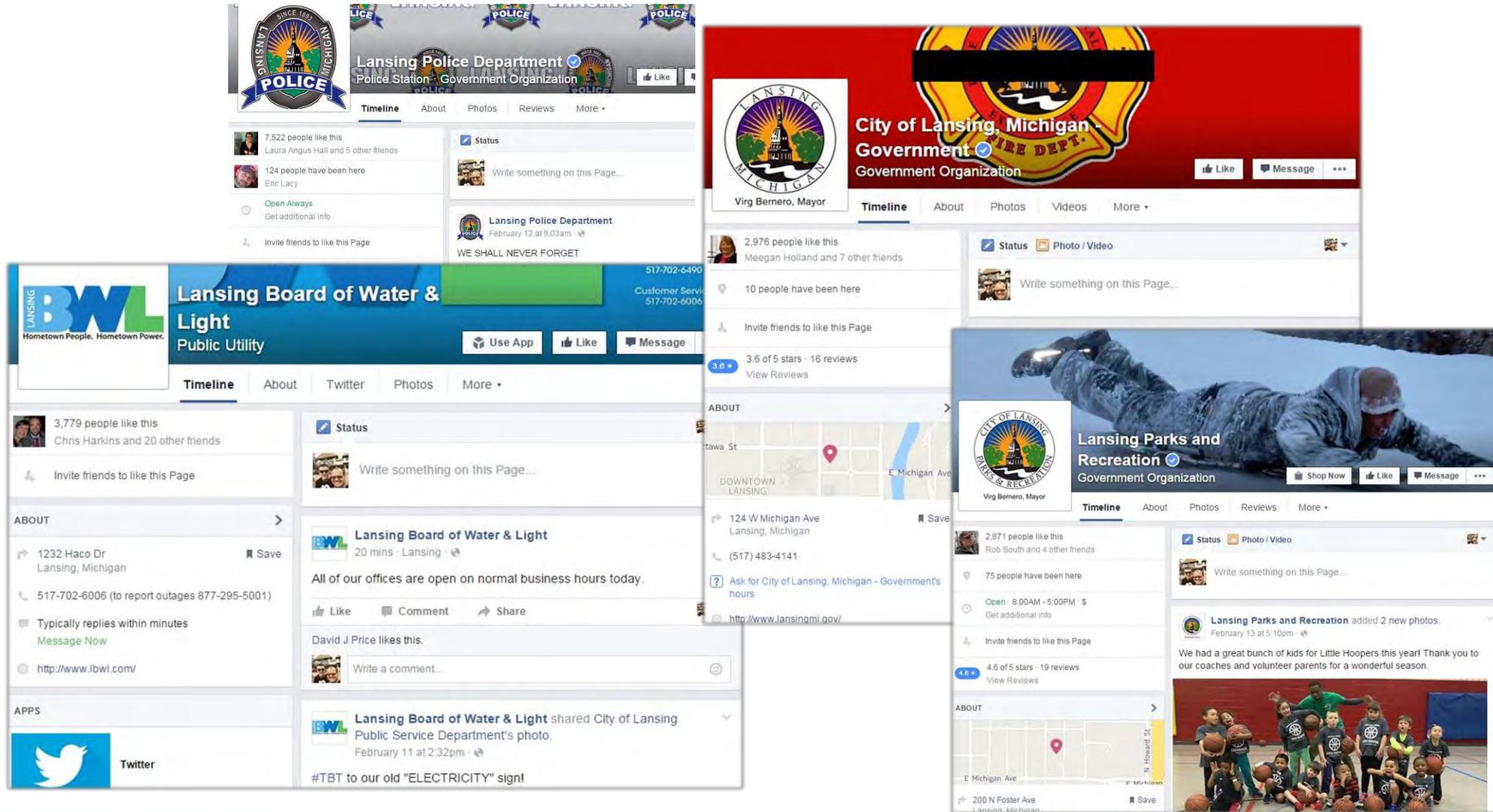


Mlive/Flint Journal did not cover our Flint event. Yet 4 TV stations did!

Getting started

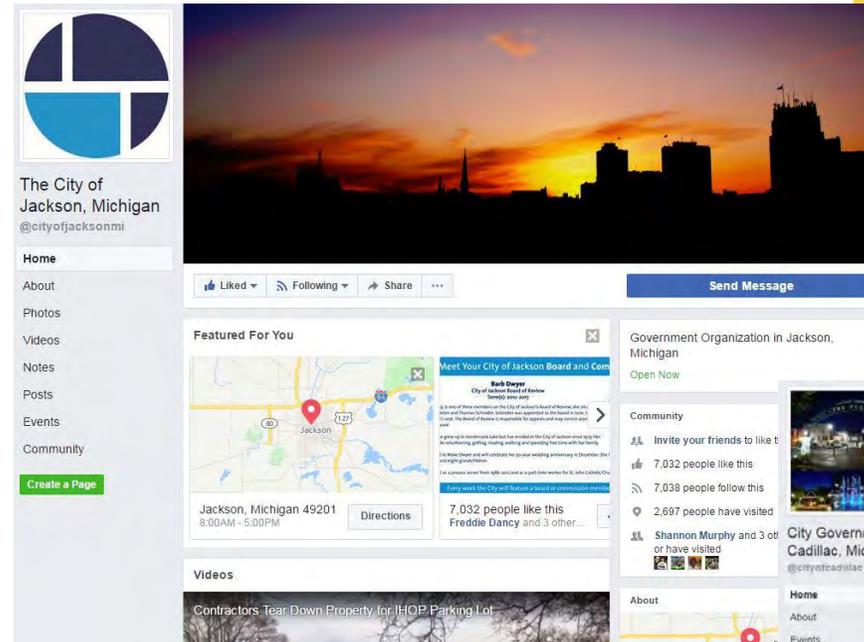
- What are your goals?
- Who is your audience?
- Who is going to manage your page(s)?
- Should we have a social media policy? – YES!
- Set up house rules/page info
- Provide useful information
- Do you need more than one page?

Examples – Lansing’s multiple pages



Where should you be?

- Start small – Limit yourself to two or three platforms.
- Research others – tons of great examples



Specific Social Media Uses for Communities

- Public Service Announcements
- Crime prevention and police assistance
- Emergency alerts and severe weather updates
- Activities and events promotion
- Construction updates
- Draw people to your websites

For Communities: Examples - PSAs

 **The City Of Ann Arbor**
1 hr · 🌐

14 City of Ann Arbor parks and nature areas are closed 4 p.m. to 7 a.m. M-F for deer control efforts until March 1. All parks remain open on Saturdays and Sundays. FAQs, maps and contact information at <http://ow.ly/WFcwI>

 **Deer Management Program**
Deer Management Program Home » Departments » Community Services Administration » Deer Management Program Page ContentResources ...
A2GOV.ORG

 **City of Wayne-Administration**
February 13 at 9:51am · 🌐

PUBLIC MEETINGS:
Tuesday, February 16th at 8:00 pm: Wayne City Council meeting at City Hall.
Thursday, February 18th at 6:00 pm: Financial Task Force Meeting at City Hall. ... See More

 **City Government of DeWitt, Michigan**
February 5 at 10:02am · DeWitt · ✨

The Last Day to Register to Vote for the Tuesday, March 8th Presidential Primary Election is Monday, February 8th, 2016 by 4:00 PM. City Hall will be open on Saturday, March 5th, 2016 from 8 am to 2 pm to vote absentee ballot prior to the Tuesday Election.

👍 Like 💬 Comment ➦ Share

 **City of Southgate Police Department**
14 hrs · 🌐

It is with heavy heart and deep regret that the Southgate Police Department announces that Officer Michael Gratz#117 a 7 year veteran of the department has passed after battling Clear Cell Sarcoma for 8 months. Please keep his family and our officers in your thoughts and prayers. #ninerstrong

For Communities: Examples - Events

 **City Government of Ferndale, Michigan** added 4 new photos — at  The Rust Belt Market.
February 10 at 1:52pm · Ferndale · 

Thank you to those who were able to attend the Master Land Use Plan Open House! We received a ton of great feedback that will be incorporated in the plan. Review the presentation at #FerndaleExchange and look for a highlight video soon! <http://www.ferndale-exchange.org/>



 **Meridian Township**
February 12 at 4:00pm · 

Family Winter Fun Weekends continue tomorrow, February 13th with Moonlight Sledding at North Meridian Road Park and Animal Valentine Campfire at Harris Nature Center. For more information about these and other activities, please visit: <http://bit.ly/SportsWkd16>



Flickr - Photo Sharing!

 **The City of Grand Rapids**
2 hrs · 

What's going on this week in #GrandRapids? If you're looking for ideas, visit <http://t.co/mX2hBx6iLz>

 Like  Comment  Share 

Social media – Emergency Uses

Kurt Dykstra
BPW update (cont.) The BPW gets another third from two other partly-owned plants elsewhere in MI, and the final third either from buying off the "grid" (i.e., the market) or via natural gas & diesel "peaking" units at a couple of locations around town.

Yesterday at 4:45pm · Like · Comment

Steve Simon We got our power back about 2 hours ago. Please thank the BPW crews for their good work!
22 hours ago · Like

Kurt Dykstra Will do, Steve. Thx.
18 hours ago · Like

Write a comment...

Kurt Dykstra
BPW update (cont.) DeYoung Power Plant has sustained some minor damage to some outbuildings. Hopefully in a couple of days all the boilers will be back online. Until then, remember that only 1/3 of Holland's power comes from DeYoung. MORE

Yesterday at 4:44pm · Like · Comment

Kurt Dykstra
BPW update (cont.) Crews from Indiana will be arriving (or have already arrived) to replace the 138 line and poles along Pine Ave. and other places. The sheer size of the poles and lines are such that our crews don't do that work. Again, estimates are at least a couple of days worth of repairs -- and closed Pine Ave. MORE

Yesterday at 4:41pm · Like · Comment

Kurt Dykstra
BPW update. A more formal and complete update will be provided by the BPW, but here is some general information. The main circuits are repaired. Still some customers (in the hundreds probably) without power, but these are largely due to downed trees damaging lines that run into a neighborhood or smaller cluster of customers. MORE . . .

Yesterday at 4:39pm · Like · Comment

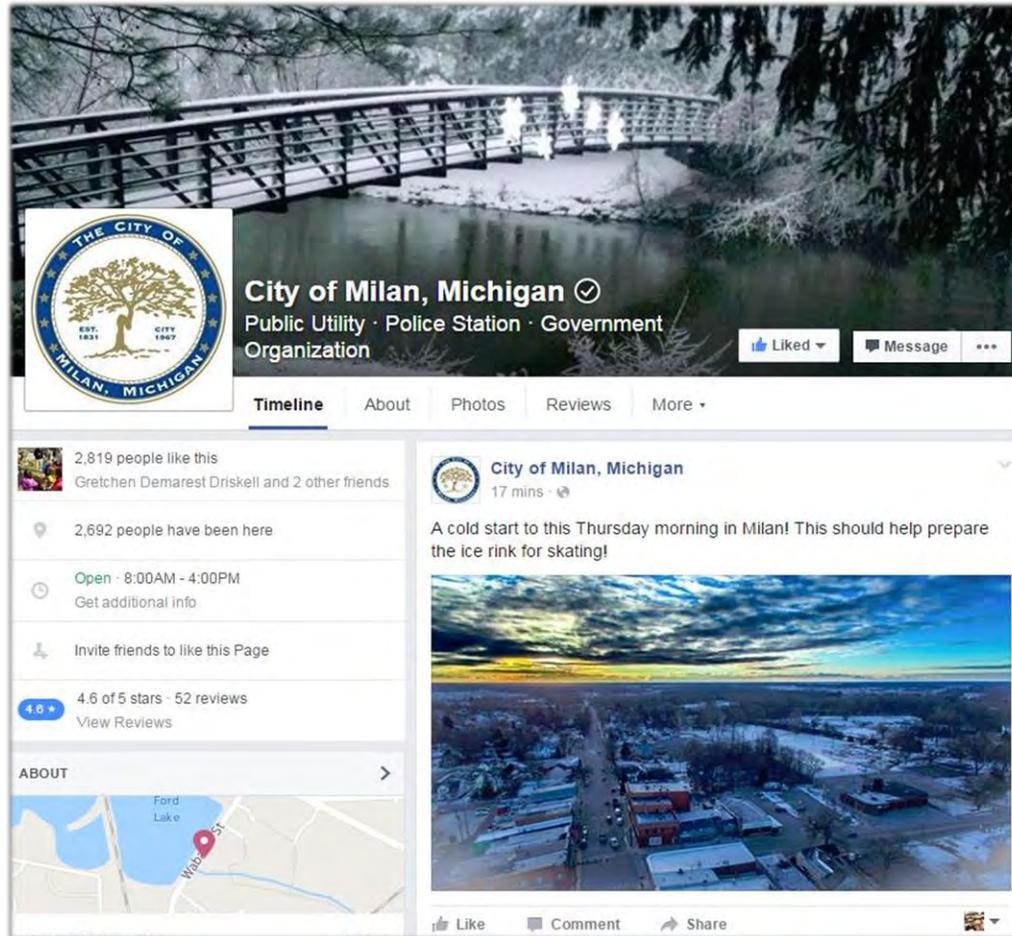
RECENT ACTIVITY

 Kurt and John Fallon are now friends. · Like · Comment · Add John as Friend



The image shows a screenshot of the Twitter profile page for the City of Holland (@CityofHolland). The profile header includes the city's seal, name, location (Holland, Mich.), and a bio: "We are the All-American City with a Dutch accent, and located near the shores of Lake Michigan." Below the header, there are navigation tabs for Tweets, Favorites, Following, Followers, and Lists. The main content area displays a list of tweets from the account, including updates about power outages, emergency operations, and road closures. A vertical strip of tulip photos is visible on the left side of the profile page.

City Examples – Building Your Brand



City of Milan Facebook page



City of Saline Facebook page

Facebook guidelines and tips – Part 1

- Should have words 'City' & 'Government' in page name
- Succinct content: 100-250 characters
- Photos and videos
- Post regularly: Daily
- Give fans exclusive access
- Read and follow FB community standards:
<https://www.facebook.com/communitystandards>



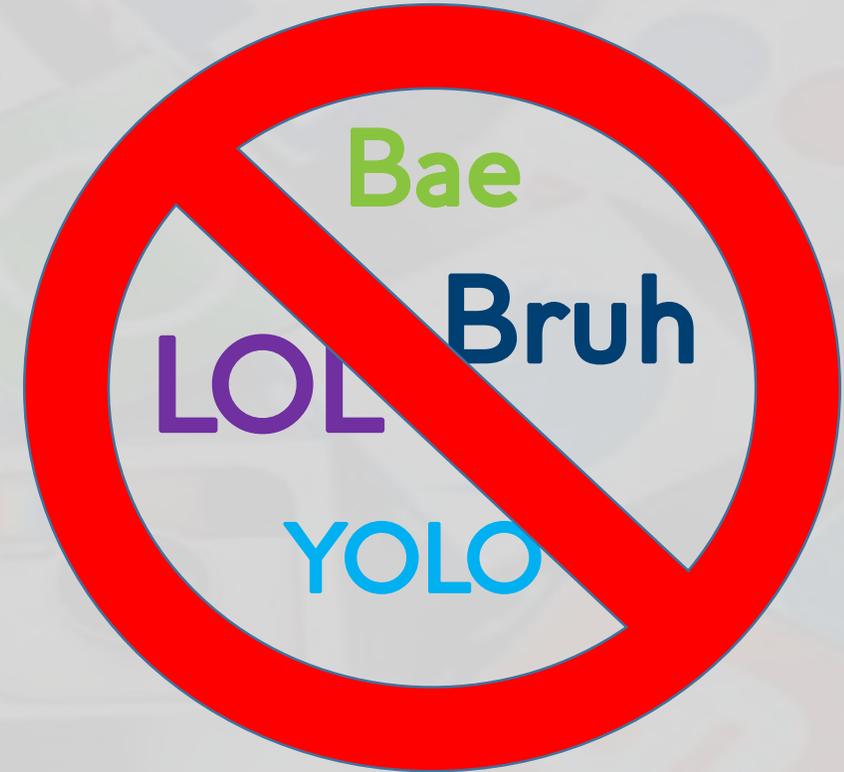
City Government of
Ferndale, Michigan
@Ferndale.Michigan



City of Berkley -
Government &
Community
Services
@cityofberkley

Facebook guidelines and tips – Part 2

- Don't take it personal – unless it is
- Be careful using humor
- Avoid cutesy phrases
- Emphasize process and how to's
- Focus on PEOPLE
- Have a social media policy!!



Twitter Tips

Twitter is a micro-blog – 140 characters or less

- Be interesting
- Hashtags: #musthashtag
- Customize
- Tweet consistently
- Follow the right folks
- Use photo or art with posts
- Give them a reason to click



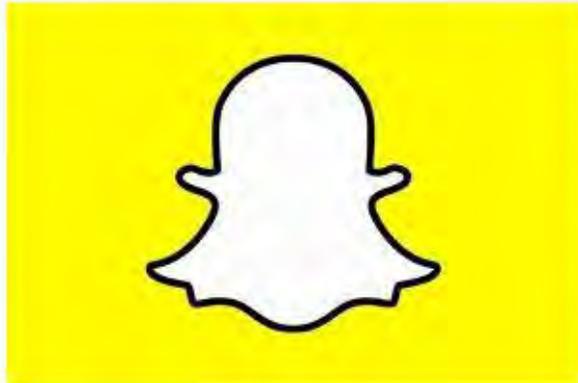
Other Forums to Consider

Snapchat: A Placemaking Tool

Posted on February 9, 2016 by Samantha Audia

Though many municipalities have bravely ventured into social media platforms like Facebook and Twitter to communicate with residents, for the grand majority of local governments Snapchat remains uncharted territory. It's understandable that local officials have hit roadblocks with social media; maintaining active accounts could be a full-time job, and the ever-developing technology is oftentimes unfamiliar to municipal leaders, many of whom view social media platforms as a minefield of potential liabilities.

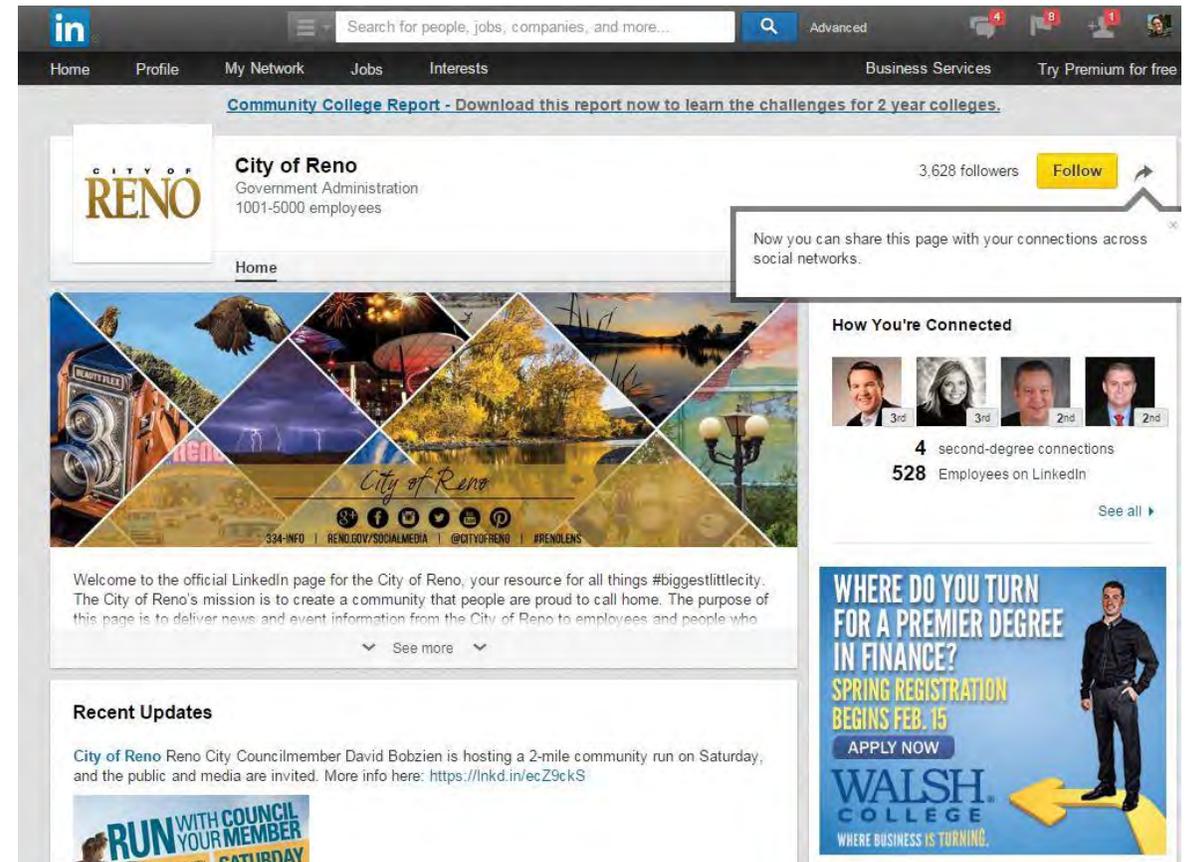
In the past year, Snapchat's popularity (and legitimacy) has grown exponentially – so much so that the White House opened an account last month to better communicate with a growing young demographic. Indeed, over 60 percent of smartphone users from the ages 13 to 34 use the app. Snapchat could serve as a vital branding resource to municipalities as they strive to improve communication, reach a younger generation, and market their communities to potential residents.



Essentially, Snapchat allows users to take photos and videos, add captions or drawings, and upload the content to a collective 24-hour "story" that followers can view. *Take a look at what they can do*, and then check out the many ways that local officials could use Snapchat to connect with residents:

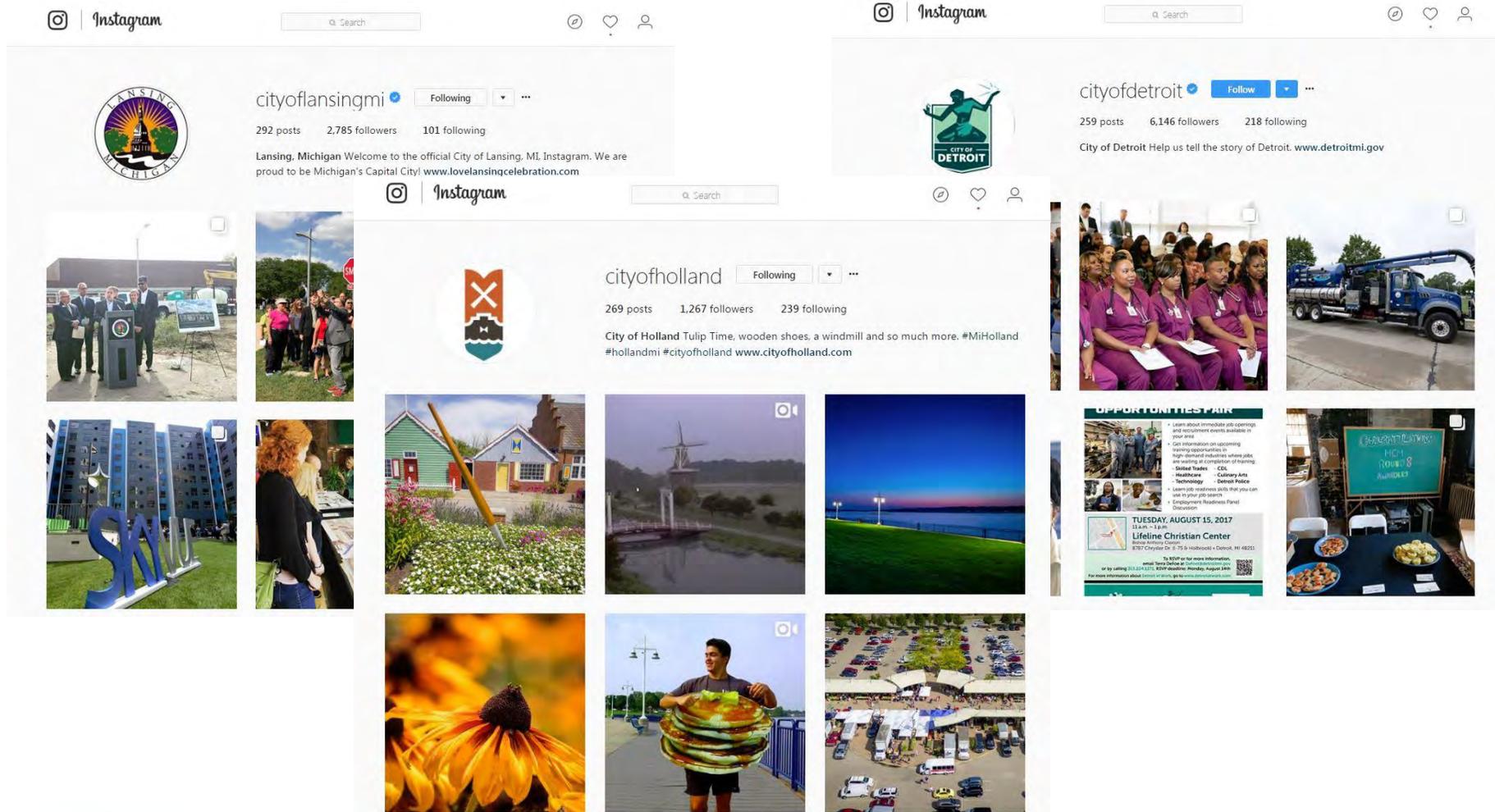
Promote Community Events

Municipalities can use Snapchat to share

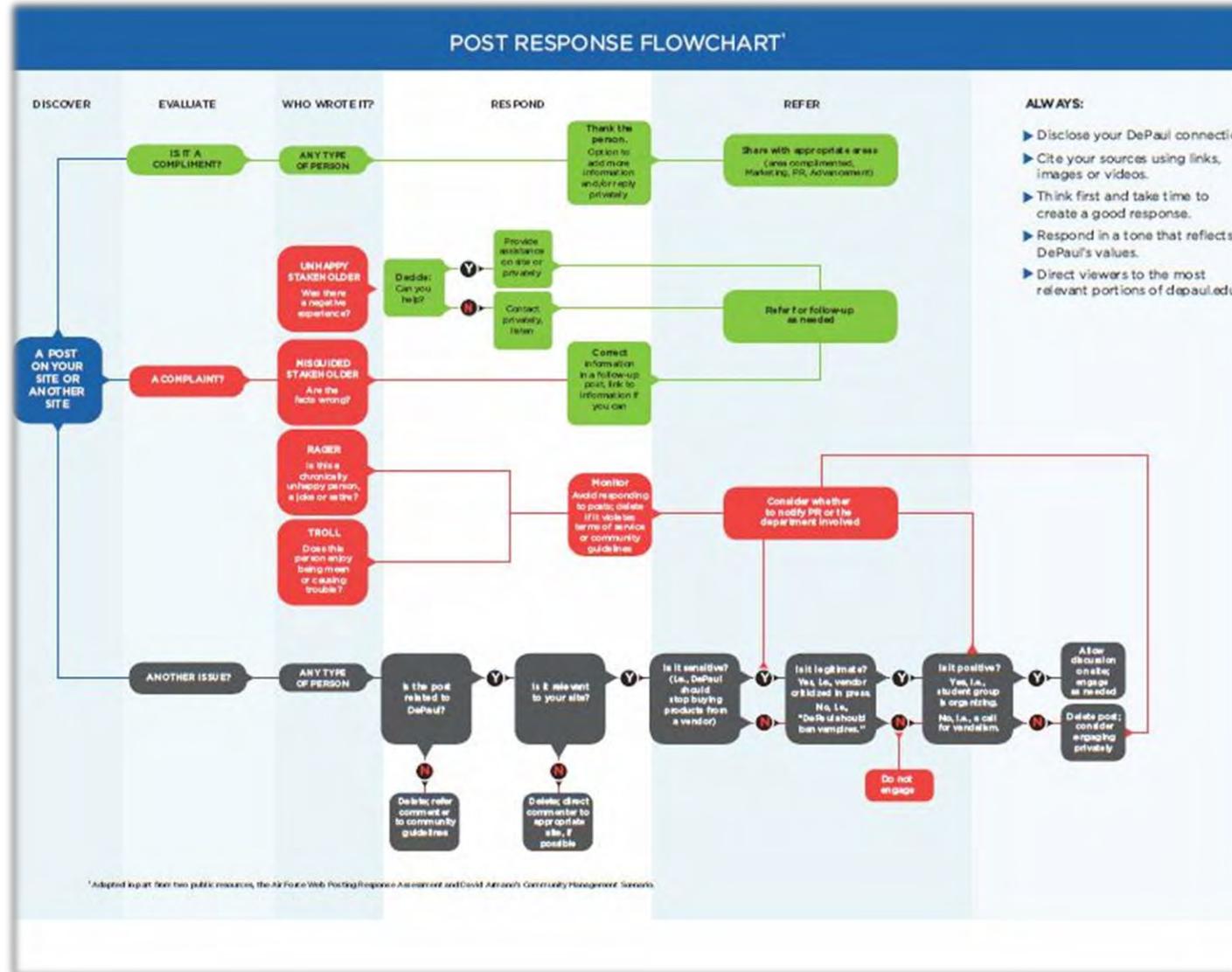


What's the Future?

I use flickr a ton, but ... the future is Instagram



Response flow chart



Matt Bach Contact Info

Contact me anytime

Matt Bach: 810-874-1073 (cell)

Email: mbach@mml.org

Twitter: [@mattbach](https://twitter.com/mattbach)

Facebook: facebook.com/mattbach

Flickr: flickr.com/michigancommunities



#CANIPOSTTHIS?

STEVE BAKER
MAYOR PRO TEM
CITY OF BERKLEY



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LAST FALL, WE BEGAN THE CONVERSATION...



Opportunities Abound!



The Opening Scene



Berkley withdraws plans for form-based code after public outcry

Berkley City Manager Grapples with Public Discontent, Inevitable Sheriff in Forefront Claims

Berkley Halts Plans to Allow Multi-Unit Homes, Open House Cancelled

- How and why was the city caught off-guard by the reaction and response?
- What should have been done to help anticipate and offset the confusion?

- What happened here?
- Secretive - or sloppy?
 - Engaged - or enraged?



A Few Days Later



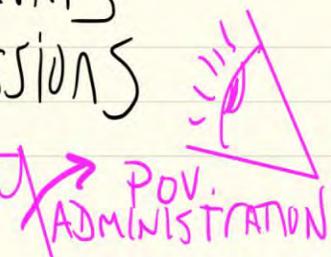
MANY OF THE SAME ISSUES REMAIN TODAY...

Let's Discuss Real World Examples Of This Framework

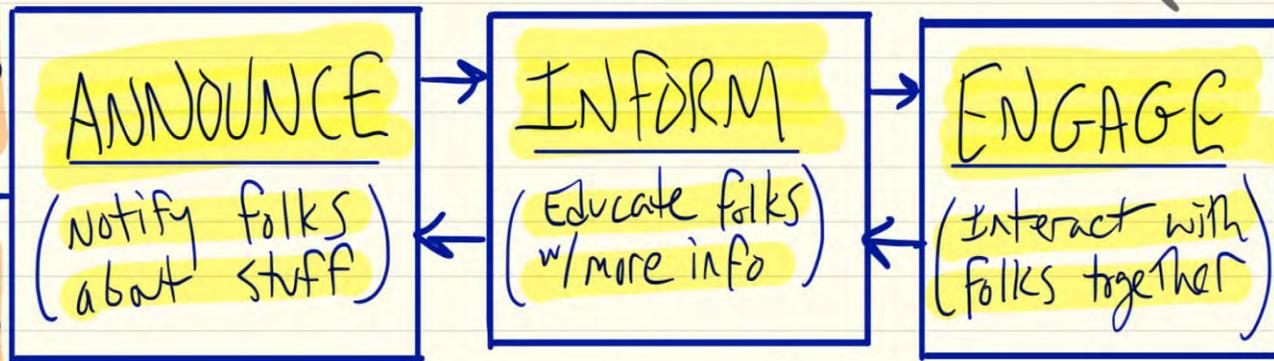
TRADITIONAL MEDIUMS

- * POSTCARDS/LETTERS
- * NEWSLETTERS/PAPERS
- * VIDEO/STREAMING
- * OPEN HOUSES
- * COFFEE CHATS
- * 1:1 DISCUSSIONS

PEOPLE FIRST * PROCESS FOCUSED * TECH DRIVEN



"ONE-WAY" FASTER EASIER



MORE EFFORT → MORE VALUE
"BI-DIRECTIONAL"

ONLINE MEDIUMS

- BE PROACTIVE * BE AVAILABLE * BE CAREFUL
- * TWITTER
 - * INSTAGRAM
 - * EMAIL BLASTS
 - * FACEBOOK
 - * TUMBLR/IM
 - * WEB PLATFORMS

"AND" / "OR"



Social Media: The Good, the Bad, and the Legalities

Michigan Municipal League
Sept. 15, 2017 • Holland
For Educational Purposes Only

Steven Mann, Principal

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michigan municipal league

MILLER
CANFIELD



MICHIGAN MUNICIPAL LEAGUE
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Presentation Outline

- Open Meetings Implications
- Public Records Implications
 - FOIA
 - Records Retention
- Policy Considerations
- Questions?



Labor/Employment Concerns

- A Taco Bell employee licked a stack of taco shells to submit for an internal contest and then posted the image on his Facebook page
- Taco Bell fired the employee, stating that “...we deplore the impressions this has caused to our customers, fans, franchisees, and team members. The behavior is unacceptable for people working in a restaurant.



The Open Meetings Act

- The intent of the Open Meetings Act (OMA) is to provide openness and accountability in government and is interpreted to accomplish this goal.

Booth Newspapers v Wyoming City Council

168 Mich App 459 (1988)

- The OMA is construed liberally in favor of openness.

Wexford County Prosecutor v Pranger

83 Mich App 197 (1978)

- Attempts to avoid the OMA are regularly met with disapproval by the courts.

Booth Newspapers v Wyoming City Council

168 Mich App 459 (1988)

The Open Meetings Act

- All meetings of a public body shall be open to the public.
- All decisions of a public body shall be made at a meeting open to the public.
- All deliberations of a public body constituting a quorum* of its members shall take place at a meeting open to the public, except for closed sessions.

MCL 15.263(1); MCL 15.263(2); MCL 15.263(3).

**Subquorum deliberations will be discussed later.*

The Open Meetings Act

- **Public Body** - means any State or Local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by State constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.

MCL 15.262.

The Open Meetings Act

- **Meeting** - means the convening of a public body at which a quorum* is present for the purpose of deliberating toward or rendering a decision on a public policy.
- **Closed Session** - means a meeting or part of a meeting of a public body which is closed to the public.

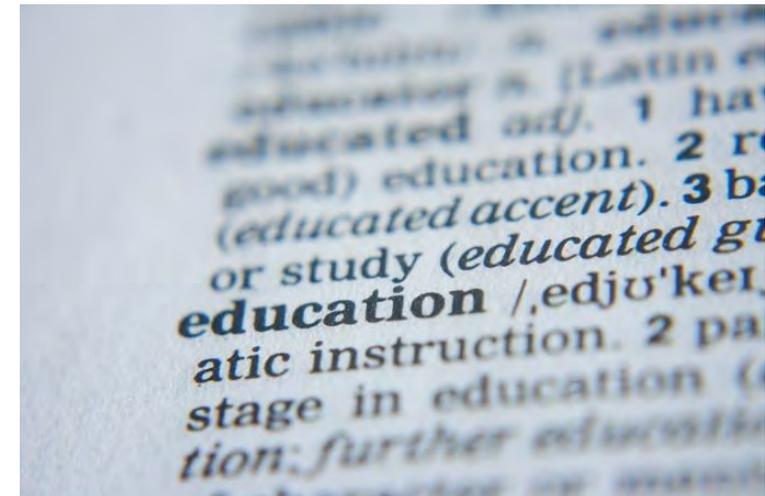
MCL 15.262.

**Subquorum meetings will be discussed later.*

The Open Meetings Act

- **Decision** - means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

MCL 15.262.



The Open Meetings Act

- **Deliberation** – While the act does not define deliberation, the courts have provided guidance:
 - “deliberation” includes “discussing,” which, in turn, is defined as “the act of exchanging views on something”
 - *Hoff v Spoolstra*, unpublished, 2008 (COA No. 272898)
 - Black’s Law Dictionary . . . defines this word as “the act of carefully considering issues and options *before making a decision or taking some action*; esp., the process by which a jury reaches a verdict; as by analyzing, discussing, and weighing the evidence”. The word “discussion” is defined as the act of exchanging views on something; a *debate*.
 - *Ryant v Cleveland Twp.*, 239 Mich. App. 430 (2000).

The Open Meetings Act

Citizens for a Better Algonac Community School v Algonac Community Schools

317 Mich. App. 171 (Sept. 8, 2016)

- Early 2014 – Board undertakes search for Superintendent
- Apr. 1, 2014 – Board votes to offer position to neighboring Superintendent and “begin contract development [asap]”
- President and members exchange a series of emails over the next few weeks regarding contract negotiations, drafts of proposed contracts, working out details and settling on a final contract.
- Apr. 28, 2014 – Board approves contract “unanimously, swiftly, and without discussion”

The Open Meetings Act

Citizens for a Better Algonac Community Schools v Algonac Community Schools

317 Mich. App. 171 (Sept. 8, 2016)

- May 2014 – P files suit alleging emails constitute deliberations of a public body in violation of OMA
- P sought declaratory judgment finding a violation of OMA, an order compelling compliance and enjoining further non-compliance, and attorney fees and costs
- T/C: Board “violated the [OMA] by conducting deliberations...outside of a public meeting”
- T/C: No injunction as P failed to show practice occurred in the past, continued at the present time, or would persist in the future

The Open Meetings Act

Citizens for a Better Algonac Community Schools v Algonac Community Schools

317 Mich. App. 171 (Sept. 8, 2016)

- T/C: No injunction = no attorney fees or costs
- COA
 - A complaint seeking pure declaratory relief, as an independent remedy standing on its own, is unsustainable in regard to alleged OMA violations.
 - OMA provides 3-tiered enforcement scheme for private litigants
 - An action to invalidate a decision made in violation of the OMA. MCL 15.270
 - An action for injunctive relief enjoining ongoing OMA violation and compelling compliance. MCL 15.271
 - An action for damages for intentional OMA violation. MCL 15.273
 - P's not entitled to injunction = no sustainable cause of action. Vacated the T/C's granting of declaratory relief.

The Open Meetings Act

Court of Appeals Holds Email Deliberations Among a “Quorum” of a Public Body Violates the OMA

Markel v Mackley, Case No. 327617 (Mich. Ct. App., Nov. 1, 2016)(Unpublished)

- Four members of a seven-member elected public body engaged in numerous email exchanges regarding matters of public policy which would soon come before the public body for consideration
- Three of the members on the group emails actively exchanged thoughts and plans to handle the matters.

The Open Meetings Act

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- The fourth member on the group emails simply received the emails but did not actively engage in the exchange.
- At subsequent public meetings, the matters were handled just as had been planned in the email exchanges.

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- The Court found that the group emails constituted a “meeting” under the OMA because there was a quorum present and deliberations occurred on a matter of public policy.
- “Because the meeting was held privately via email, the four defendants violated [Section 3(3) of the OMA] which required such deliberations to be open to the public.”

The Open Meetings Act

What about subquorum meetings or communications?

- These cases were held to be in violation of the OMA:
 - *Booth v Wyoming*, 168 Mich.App. 459, 425 N.W.2d 695 (1988)(subquorum deliberations of a city council over two day period violated the OMA).
 - *Booth Newspapers, Inc. v. Univ. of Michigan Bd of Regents*, 192 Mich.App. 574, 481 N.W.2d 778 (1992) aff'd in part and rev'd in part on other grounds 444 Mich. 211 (1993) (sub-quorum committee given the authority to act regarding the selection of a university president violated the OMA; “round-the-horn” telephone calls and conferences resulted in “decisions” required to be made at an open meeting).

The Open Meetings Act

- *Federated Publications, Inc. d/b/a Lansing State Journal v Michigan State University*, 221 Mich App 103; 561 N.W.2d 433 (1997), rev'd on other grounds 460 Mich 755 (1999) (sub-quorum committee given the authority to act regarding the selection of a university president violated the OMA – note – reversed on unrelated constitutional grounds).
- *Schmiedecke v Clare School Bd*, 228 Mich App 259; 577 N.W.2d 706 (1998), (sub-quorum committee given the authority to make only a recommendation on policy regarding evaluation of administrators violated the OMA).
- *Hoff v Spoelstra, et al*, unpublished opinion per curiam of the Court of Appeals, issued July 8, 2008, (Docket No. 272898) (subquorum discussions on termination of city attorney violated OMA.)

General Provisions of FOIA

- *Legislative Intent*
 - *Public Access to Government Information*
 - *Access to the affairs of government and official acts of public officials*
 - *Participate in the democratic process*
- *FOIA is a pro-disclosure statute*
- *Exemptions are narrowly construed*
- *Duty to provide access to non-exempt records*

Records Subject to Disclosure

- All public records are subject to full disclosure under the act unless the material is specifically exempt under an express statutory exemption.
Swickard v. Wayne County Medical Examiner, 438 Mich 536, 544 (1991).

What is a Public Record?

- *A public record is a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software.*

MCL 15.232

What is a Writing?

- *A “Writing” means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.*

MCL 15.232(h)

Electronic Records

Text messages satisfy the statutory definition of a public record if they capture communications by public officials in the performance of an official function.

- Flagg v City of Detroit, 252 F.R.D. 346 (E.D. MI 2008)



Records Retention

- “A record that is required to be kept by a public officer in the discharge of duties imposed by law, that is required to be filed in a public office, or that is a memorial of a transaction of a public officer made in the discharge of a duty is the property of this state and shall not be disposed of, mutilated, or destroyed except as provided by law.”

MCL 399.5(2) (Michigan Historical Commission Act governing record retention).

Records Retention

- “All official books, papers or records created by or received in any office or agency of the state of Michigan or its political subdivisions, are declared to be public property, belonging to the people of the state of Michigan. All books, papers or records shall be disposed of only as provided in...[Record Retention Law MCL 399.5].”

MCL 750.491 (Michigan Penal Code).

Records Retention

- “Any person who shall wilfully carry away, mutilate or destroy any of such books, papers, records or any part of the same, and any person who shall retain and continue to hold the possession of any books, papers or records, or parts thereof, belonging to the aforesaid offices and shall refuse to deliver up such books, papers, records, or parts thereof to the proper officer having charge of the office to which such books, papers, or records belong, upon demand being made by such officer or, in cases of a defunct office, the Michigan historical commission, shall be guilty of a misdemeanor, punishable by imprisonment in the state prison not more than 2 years or by a fine of not more than \$1,000.00.”

MCL 750.491 (Michigan Penal Code).

Policy Considerations

Applicable to email, text messaging and social media platforms

- Recognize record retention requirements
 - Practical challenges of retention, reproducing, disclosing
- Recognize OMA/FOIA Concerns
 - Discourage discussions or deliberations by council members
 - Have media/management staff post and respond on social media, not council members
- Discourage use of personal accounts for public business
- Consult with your legal counsel regarding
 - Employment law
 - First amendment

Questions?



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Steve co-authored the *Sunshine Laws and Local Government* (OMA/FOIA) chapter of the *Michigan Municipal Law* handbook published by the Institute for Continued Legal Education.

Steve has authored several *amicus curiae* briefs in both the Michigan Court of Appeals and the Michigan Supreme Court arguing on behalf of the Michigan Municipal League, the Michigan Townships Association, the Public Corporations Section of the State Bar of Michigan, and other municipal associations and their constituents.

Steve served twelve years elective office on the Charter Township of Plymouth Board of Trustees (2000-2012), including one term as Township Supervisor and two terms as Trustee, and one additional year as an appointed trustee (2015-2016). He received his law degree, *cum laude*, from Thomas M. Cooley Law School in Lansing, and his B.B.A., *summa cum laude*, from Cleary University.

Q&A



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