

SOCIAL MEDIA & TOWNSHIP GOVERNMENT THE DO'S & THE DON'TS

TOWNSHIP OFFICIALS OF ILLINOIS
112TH ANNUAL
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LEGAL CONSIDERATIONS

- ✓ First Amendment rights limiting government restrictions on speech
- ✓ Open Meetings Act (“OMA”) issues
- ✓ Public record issues
- ✓ Freedom of Information Act (“FOIA”) issues

LEGAL CONSIDERATIONS

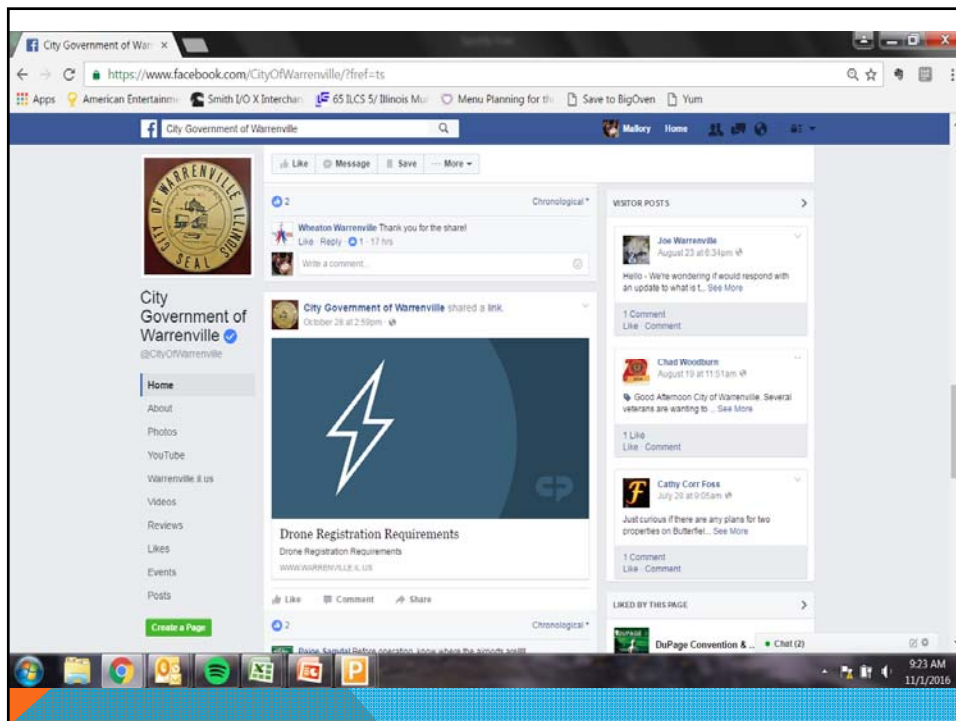
What Kind of Forum is Created?

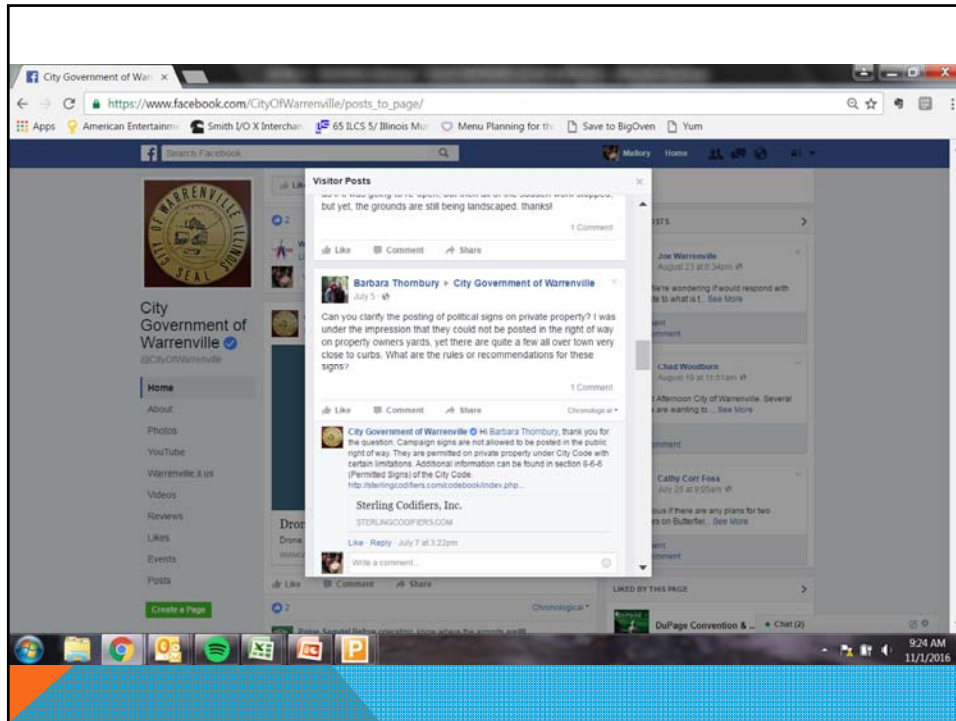
- The creation of a government social media account implicates the First Amendment because citizen speech is involved
- The type of forum created by the government body determines the limitations on speech
- The two primary public forums are:
 - **designated public forum** and
 - **limited public forum**

LEGAL CONSIDERATIONS

Designated Public Forum

- The government intentionally opens a nontraditional public forum for public discourse
 - This is usually when citizens can both post their own content on the Township or Township's Facebook "wall" and comment on Township or Township posts
 - Regulation must be:
 - content-neutral
 - narrowly tailored to serve an important government interest, and
 - leave open ample alternative channels of communication.





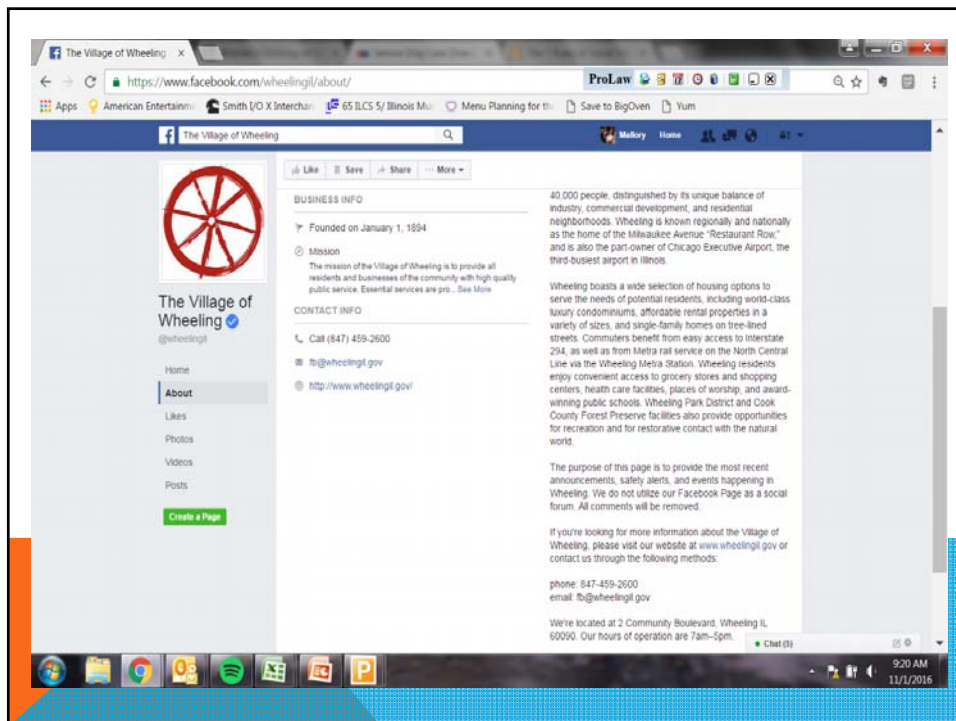
LEGAL CONSIDERATIONS

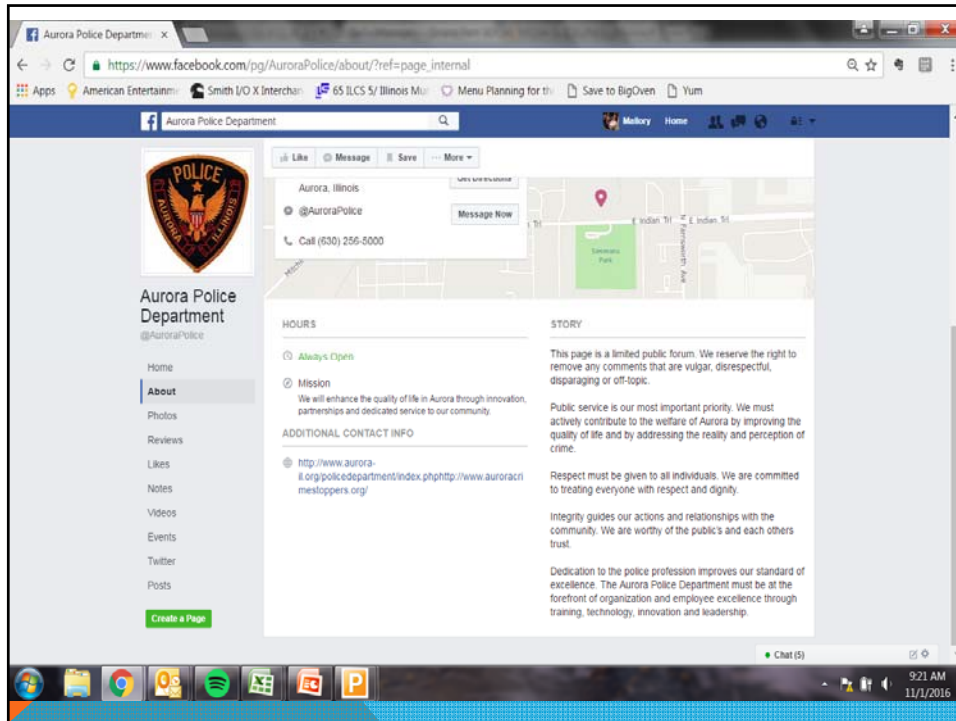
Limited Public Forum

- Created by the government for a limited purpose
 - Use by certain groups or for the discussion of certain subjects
 - This is usually when citizens can only comment on a post
- Restriction must be reasonably related to a legitimate government purpose and be viewpoint neutral
 - Some content based restrictions can be imposed if it is to preserve the limits of the speech imposed by the Township
 - Excluded speech that falls within the forum's subject matter however, will be subject to strict scrutiny

GUIDELINES FOR RESTRICTING SPEECH

- DO** adopt a policy that clearly designates the type of forum created and the scope and purpose of the social media site
- DO** define what kinds of content fall outside acceptable parameters or scope
- DON'T** forget to provide the public with notice of content that is restricted and a warning that restricted content will be removed
- DON'T** remove content just because it is negative or unfavorable to the Township, its employees or officials





LEGAL CONSIDERATIONS

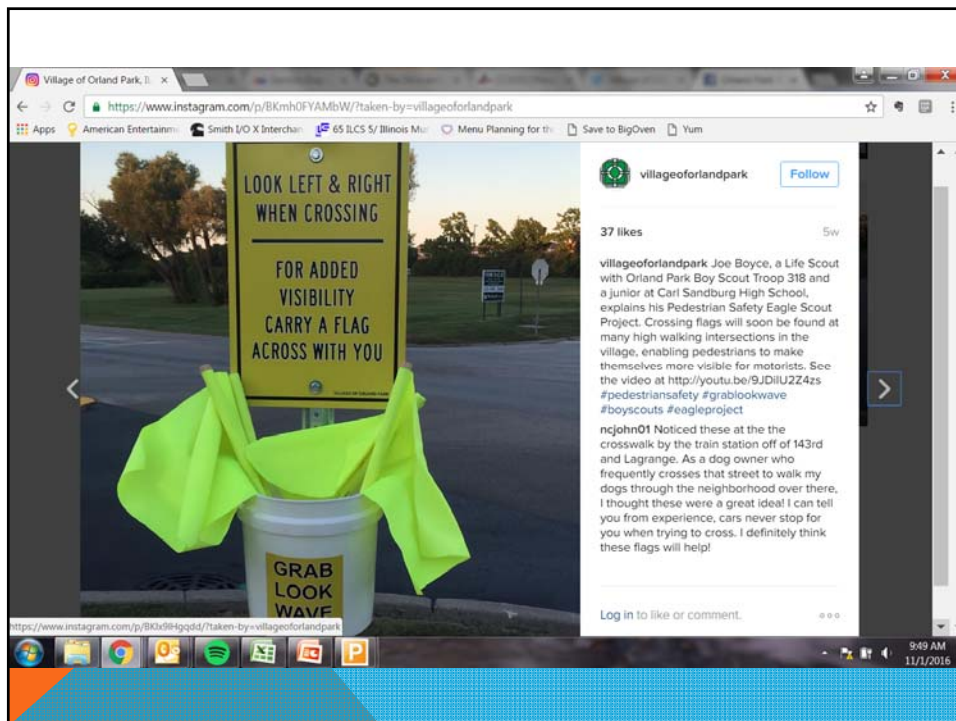
What Speech Can You Restrict?

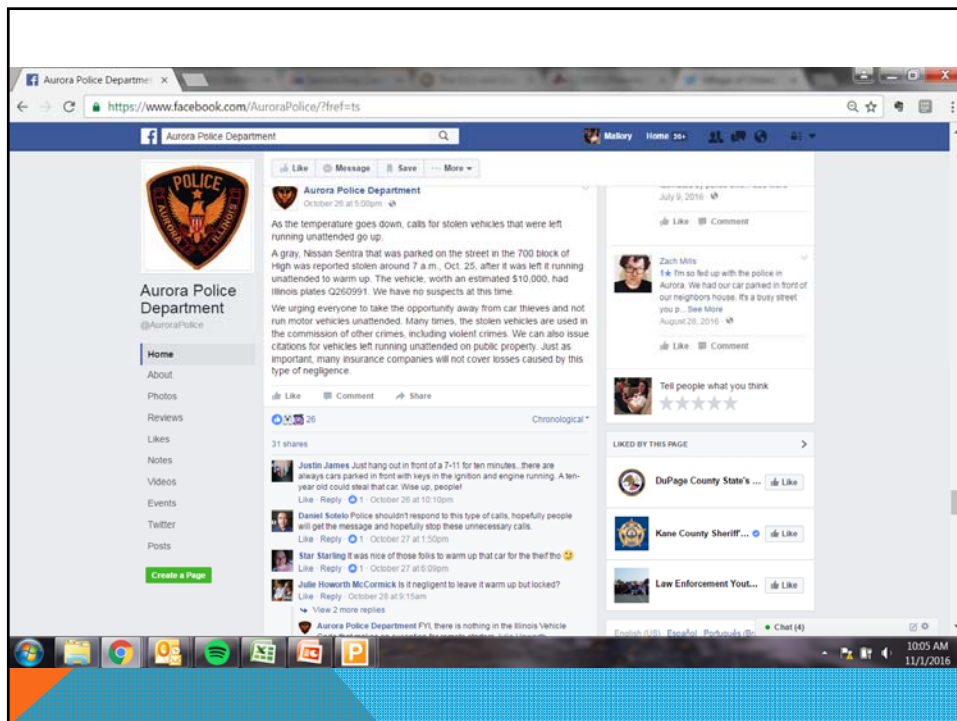
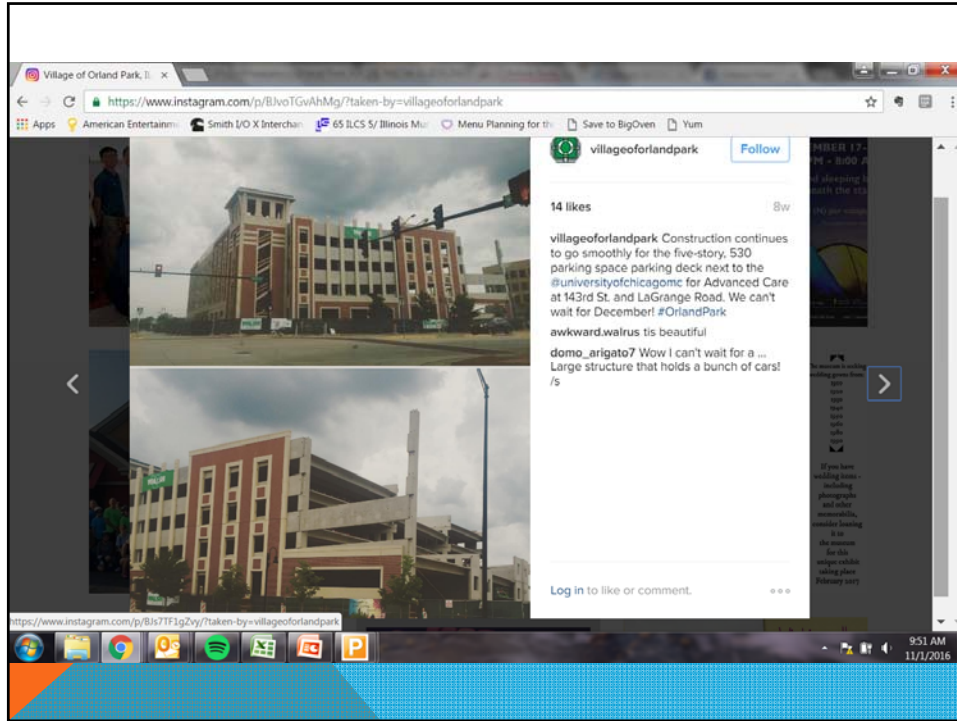
- Slanderous, libelous, or defamatory language or content*
- Comments not typically related to the particular site or blog article being commented upon*
- Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability or sexual orientation
- Sexual content or links to sexual content
- Business solicitations

LEGAL CONSIDERATIONS

What Speech Can You Restrict?

- Personally identifiable information, such as an address, phone number, social security number or other sensitive information
- Comments cannot represent a person other than the one posting the comment.
- Charitable solicitations or political campaigning
- Conduct or encouragement of illegal activity
- Content that violates a legal ownership interest of any other party





LEGAL CONSIDERATIONS

Procedures for Removing Speech

- In case of dispute over content of the removed speech, the Township should keep a record of its decisions
 - This should include, at minimum, a screenshot (or some copy) of the speech being removed and a memo that explains how the speech in question violates the Township's policy
- There should be a central location where these records are maintained
- Inflammatory or inappropriate comments are most likely not subject to the Illinois Record Retention law but the Township should have a policy that dictates how long it will retain the removed speech

COMMUNICATING WITH THE PUBLIC

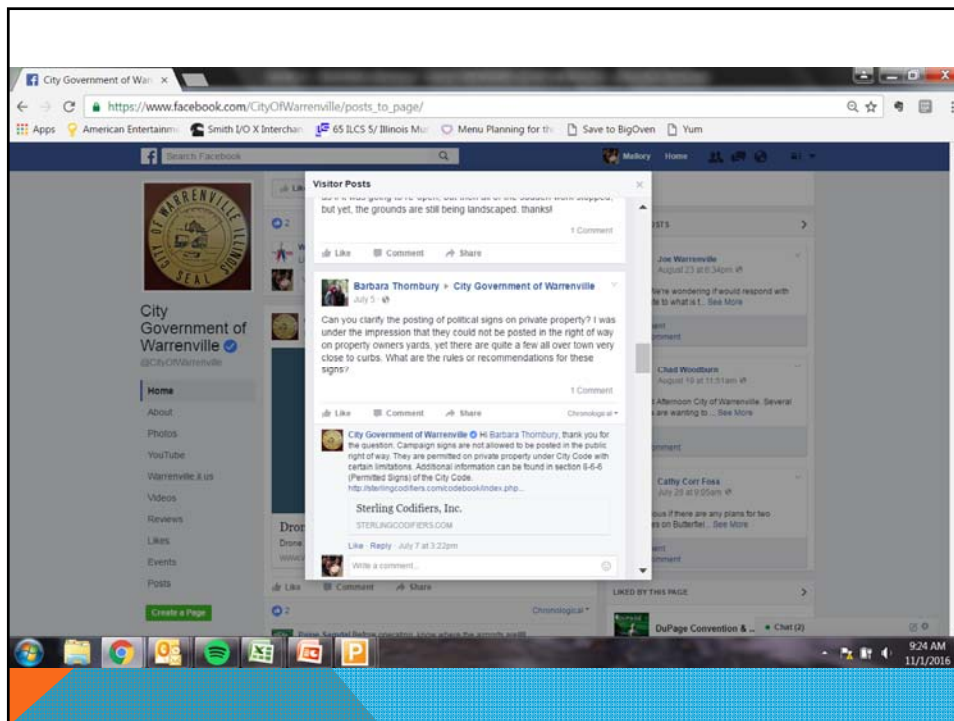
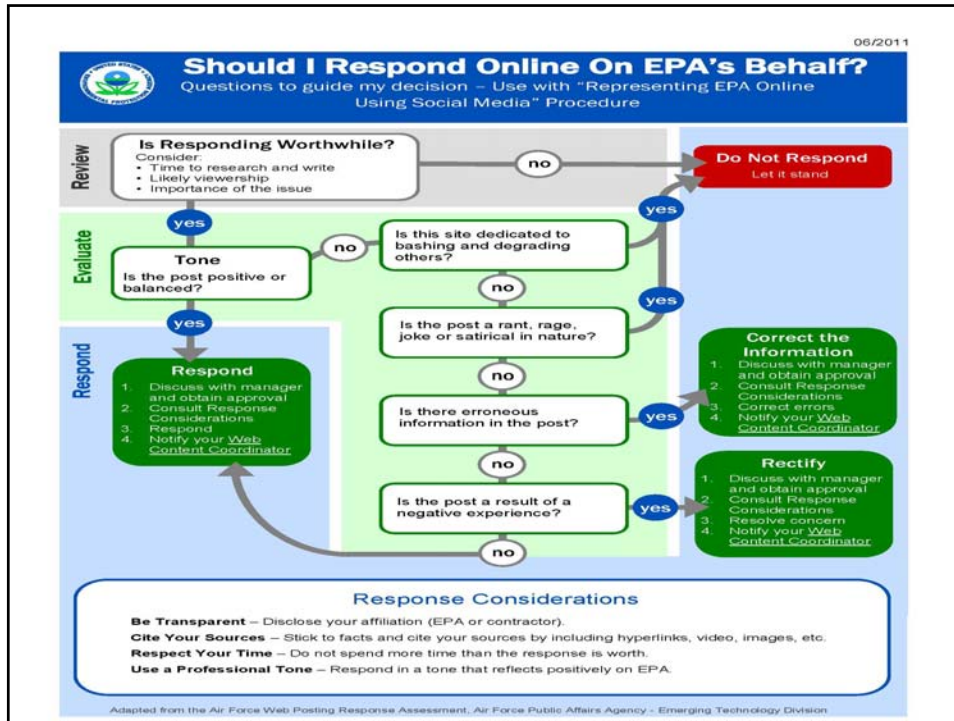
- Identify the policy concerning the content the Township will post
- Content posted on social media accounts can be conversational and always remain professional, particularly if responding to a comment
- Employees using the Township's social media accounts should obey all privacy protection laws
- Employees using the Township's social media accounts should protect sensitive and confidential Township information at all times

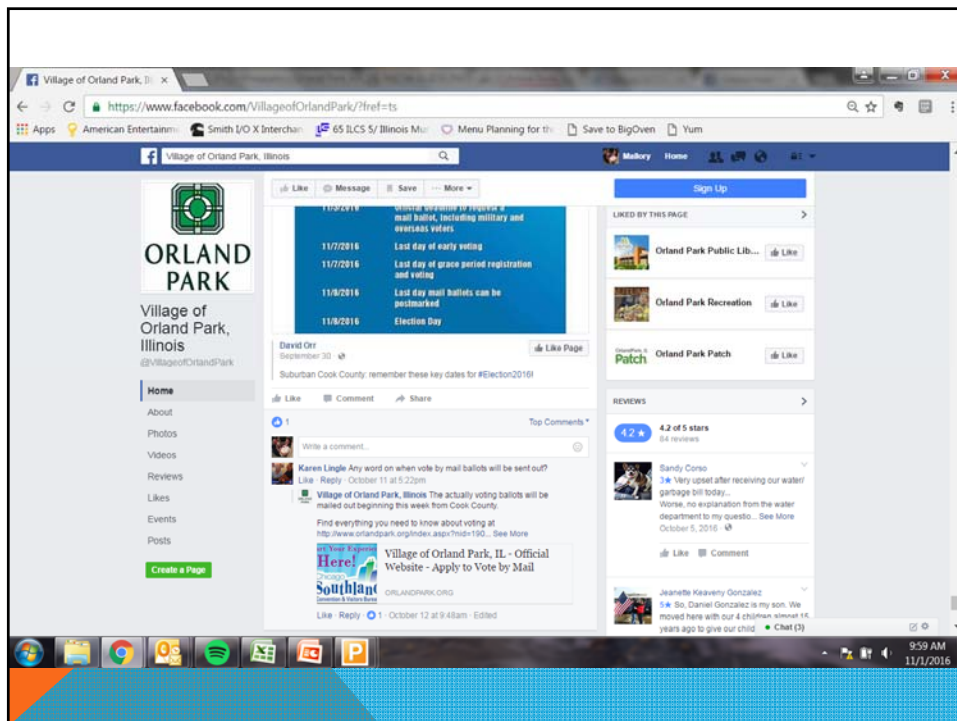
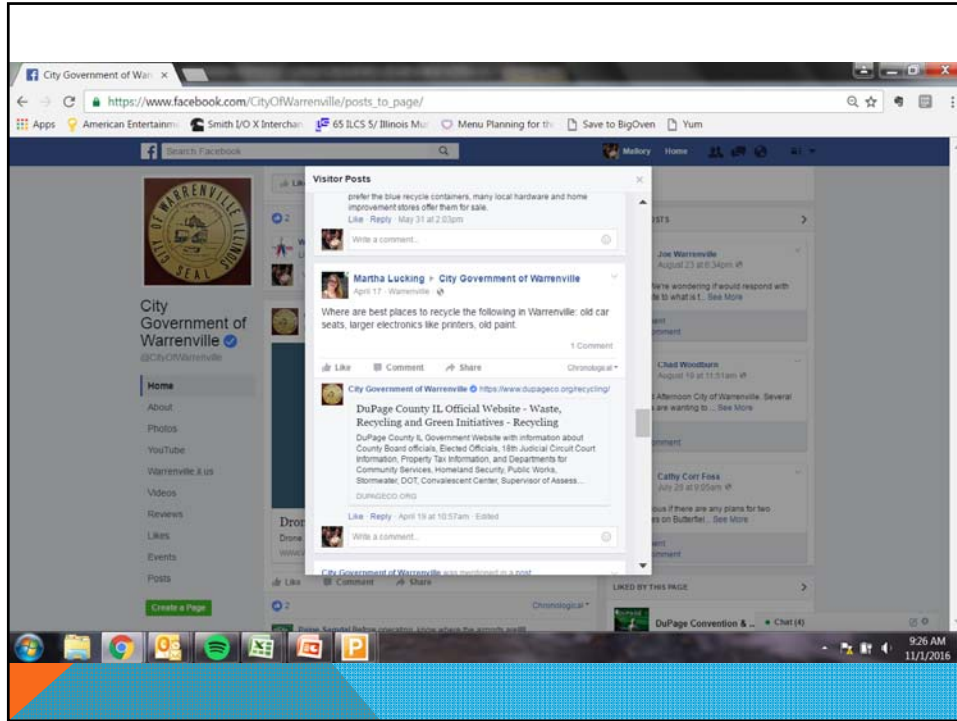
COMMUNICATING WITH THE PUBLIC

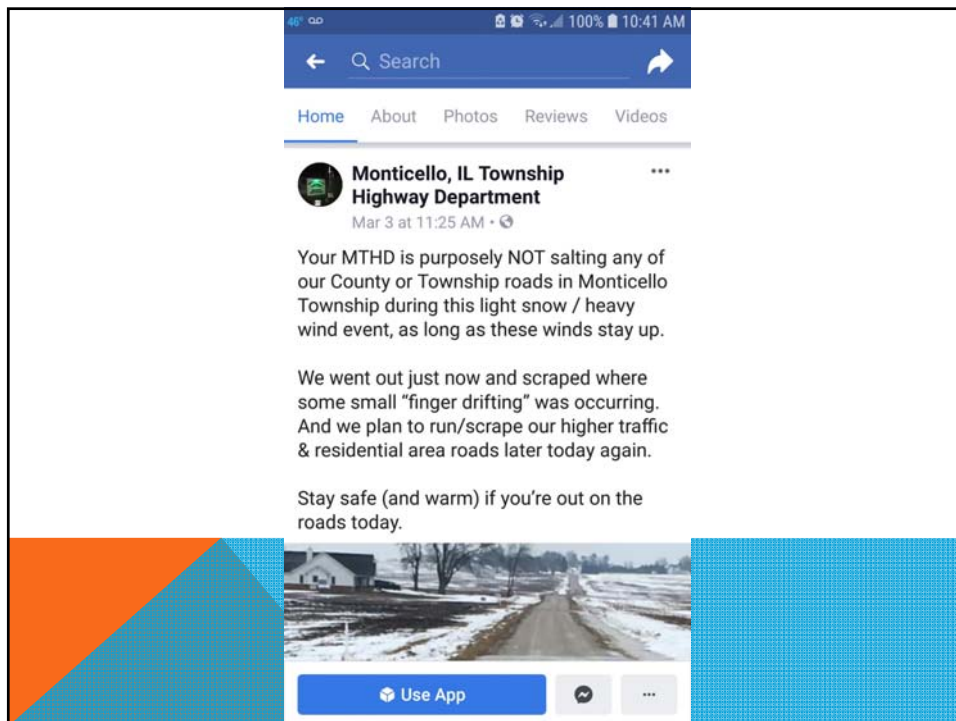
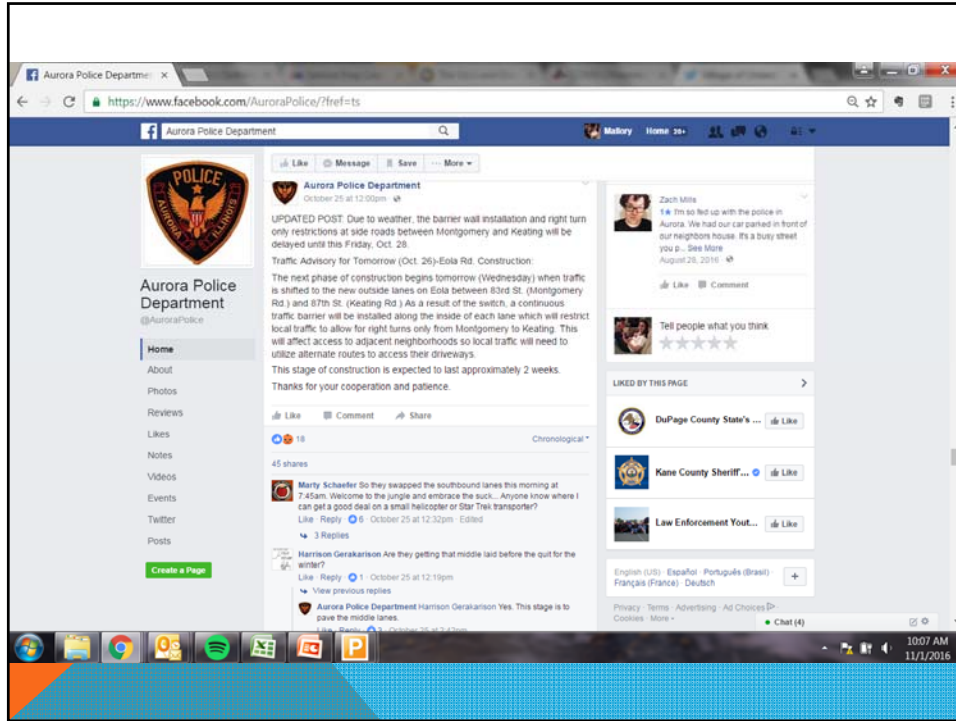
- Avoid disputes between Township employees/posters and commenters
- Forward requests for Township-related services received on the Township's social media accounts through proper channels
- Comments or responses on Township social media accounts should be limited
 1. Providing a factual response to a question posed
Example: What road is closed for construction
 2. Providing the information for the appropriate agency which would be most helpful; or
 3. Encourage or direct persons interacting with the Township's social media accounts to use appropriate resources

COMMUNICATING WITH THE PUBLIC

- No employee should comment on litigation involving the Township on the Township's social media accounts without prior approval of the Township's Attorney







POLICY CONSIDERATIONS

- **Have designated person responsible for social media**
 - Can designate certain employees to post on behalf of the Township or generate content, but someone should be a point person
 - Make sure all designated employees understand the policy
- **If social media is not going to be monitored 24/7, say so in the policy**
- **Tie social media accounts to a general Township email in case of employee turnover**
- **Have a list of all current passwords for social media accounts**

POLICY CONSIDERATIONS

Corrections, Updates and Edits

- **It is perfectly acceptable to update, correct or edit a post**
- **The post should clearly indicate that it has been changed and if possible, how it was edited or altered**
- **Any deleted posts should be retained – similar to deleted comments**

FINAL REMINDERS

Don't ...

Pick a fight on social media

- it never ends well;

Try to change someone's mind

- that never happens;

FINAL REMINDERS

Don't ...

Feed (i.e. interact with) the trolls;

Make it personal;

Remove comments without an explanation;

Remove comments because you don't like them or because they are critical of your organization.

FINAL REMINDERS

Do ...

- Take the conversation offline when appropriate
 - private matter
 - specific situation involving the individual);
- Keep it professional;

FINAL REMINDERS

Do ...

- Know who you are dealing with
 - A journalist? A lobbyist? A troll?
 - Are they influential on social media?
 - Do they have an agenda?
 - Do they have a history of posting negative comments on your channels?;

FINAL REMINDERS

Do ...

Post corrective information if you
believe the comments are an honest mistake

FINAL REMINDERS

And Do...

Stick to the facts;
Refer to authoritative sources when answering;
Do thank people for re-tweets, good comments, etc.,
and offer more info if relevant;
Get pre-approval for different types of interactions;
Have a crisis plan in place in case a simple
comment escalates into a full blown PR crisis;
Keep track of your interactions, good and bad.

SOCIAL MEDIA & THE OPEN MEETINGS ACT

Officials commenting on a post may inadvertently create a meeting

"Meeting" means any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

SOCIAL MEDIA & PUBLIC RECORDS

- **Illinois Local Records Act**
 - Social media posts are public records if they are made on an official public agency account or a private account being used to distribute information for that agency to the public
- **There is no "social media" category under the Local Records Act**
- **Records retention is based on the function and content of the record, not its format**
 - Example: two way communications (comments and replies to posts) would be correspondence
- **Do not need to preserve redundant content in all of its forms**

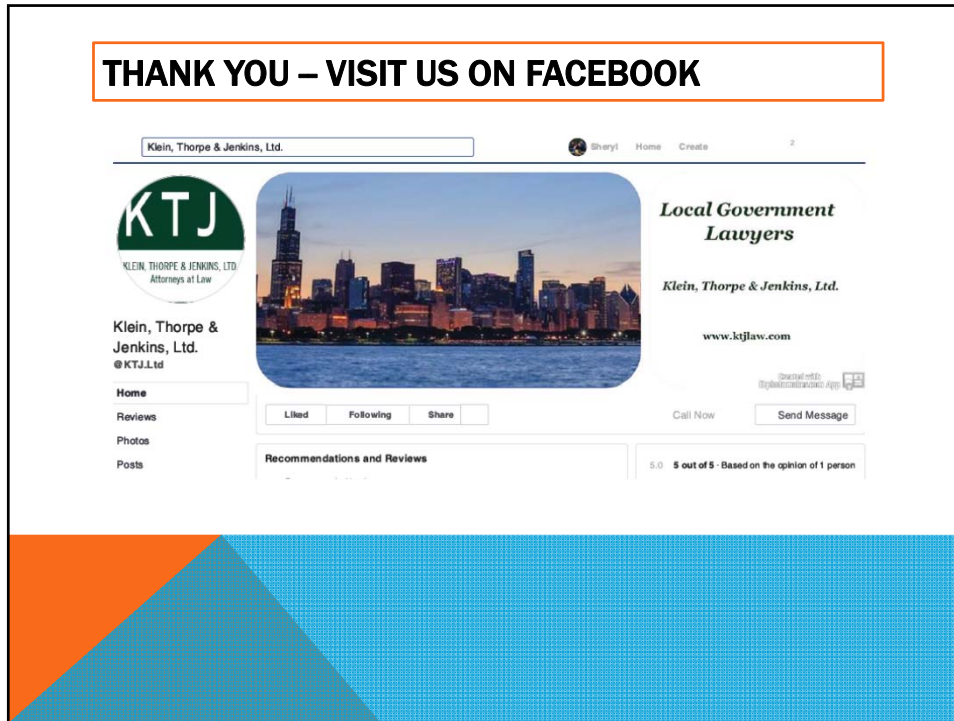
SOCIAL MEDIA & FOIA

- A Township's social media postings would be public records akin to a press release or announcement
 - Comments that cause or constitute some government action or response are public records
 - Comments are similar to correspondence
- Comments by public are unclear, but are likely public records
- Submitting FOIA requests via social media
 - FOIA states that written requests can be submitted to a public body via "other means available" which can include social media sites
 - Township should monitor comments for requests for documents and follow up on all potential requests

THANK YOU – VISIT KTJLAW.COM



THANK YOU – VISIT US ON FACEBOOK



THANK YOU – VISIT US IN PERSON

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