

**CITY COUNCIL MEETING AGENDA**  
**CITY OF FOND DU LAC, WISCONSIN**  
Legislative Chambers  
160 S Macy Street

May 8, 2024  
6:00 PM

**1. CALL TO ORDER**

- a. Roll Call
- b. Declaration a Quorum Is Present
- c. Pledge of Allegiance
- d. Silent Reflection
- e. Proclamation Recognizing Police Memorial Week

**2. PUBLIC HEARINGS**

**3. CONSENT AGENDA**

- a. April 26, 2024 Minutes
- b. List Of Claims Dated May 1, 2024

**4. AUDIENCE COMMENTS (Agenda and Non-agenda items)**

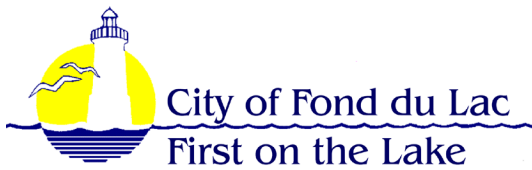
**5. ACTION ITEMS**

- a. Resolution No. 9123  
A Resolution Waiving The Prohibition Against Possession Of Alcoholic Beverages On Specified Public Ways And Allowing A Temporary Expansion Of Premises For Thelma At 51 Sheboygan Street On June 6, 13, 20, And 27, 2024 For Free Concerts  
Introduction: City Clerk
- b. Resolution No. 9124  
A Resolution Waiving The Prohibition Against Possession of Alcoholic Beverages On Specified Public Ways For Thelma At 51 Sheboygan Street On July 11, 18, And 25, 2024; August 1, 8, 15, 22, And 29, 2024; And September 5, 2024, For Free Concerts  
Introduction: City Clerk

**6. PRESENTATION OF INPUT ITEMS**

- a. Destination Lake Winnebago Region Update  
Presented By: Craig Molitor
- b. Archive Social Media Update  
Presented By: City Attorney
- c. City of Fond du Lac Website Overview  
Presented By: City Manager

**7. ADJOURN**



## Proclamation

*Whereas, in 1962, President John F. Kennedy signed the first proclamation recognizing, May 15<sup>th</sup> as Peace Officers Memorial Day and the week in which it falls as National Police Week to honor Officers who have fallen in the line of duty, and recognize the sacrifices made by the families of those Officers and the families of those who continue to protect and serve our communities; and*

*Whereas, the City of Fond du Lac recognizes the tireless efforts of the Fond du Lac Police Department in protecting and serving the citizens of our community and is aware of the sacrifices that Police Officers make by risking their lives each and every day in order to safeguard the public; and*

*Whereas, more than 24,000 law enforcement officers in the United States have been killed in the line of duty, including four members of the City of Fond du Lac Police Department; Officer William C. Prinslow who was shot on duty and later died of his injuries on November 19, 1898; Officer Nick A. Klaske who was shot on duty and later died of his injuries on October 31, 1961; Officer Craig A. Birkholz, who was shot and killed in the line of duty on March 20, 2011; and Officer Joseph J. Kurer who died in the line of duty on September 22, 2021 due to complications from COVID-19; the names of these dedicated public servants are engraved on the walls of the National Law Enforcement Officers Memorial in Washington D.C., the Wisconsin Police Memorial at the State Capitol, and the Fond du Lac Public Safety Memorial located at Hamilton Park; and*

*Whereas, in addition to the fallen Police Officers of the City of Fond du Lac Police Department, Trooper Trevor J. Casper of the Wisconsin State Patrol, was shot and killed in the City of Fond du Lac on March 24, 2015; and*

*Whereas, the Fond du Lac Police Memorial Ceremony will be held on May 9<sup>th</sup> starting at 1:00PM at the Fond du Lac Public Safety Memorial located at Hamilton Park; and*

*Now, Therefore, I, Tiffany Brault, President of the Fond du Lac City Council, on behalf of our City and its residents, formally designate May 15, 2024, as Peace Officers Memorial Day, and May 12 – 18, 2024, as Police Week in the City of Fond du Lac, joining our great Nation in honoring those in law enforcement by recognizing their sacrifices and immeasurable contributions in protecting our community and its residents.*

Dated: May 8, 2024

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Tiffany Brault  
City Council President

**CITY COUNCIL MEETING AGENDA  
CITY OF FOND DU LAC, WISCONSIN**

Title: April 24, 2024 Minutes

Subject: April 26, 2024 Minutes

Initiator:

Recommendation:

**ATTACHMENTS:**

File Name

Minutes\_2024\_4\_24\_Meeting(1112).pdf

**CITY COUNCIL MEETING MINUTES  
CITY OF FOND DU LAC, WISCONSIN**

Legislative Chambers  
160 S Macy Street

April 24, 2024  
6:00 PM

**CALL TO ORDER**

Roll Call

Present

Tiffany Brault  
Antonio Godfrey  
Keith Heisler  
Angela C Luehring  
Patrick Mullen  
Thomas Schuessler  
Brett Zimmermann

Administrative Staff

Joseph Moore, City Manager  
Dyann Benson, Community Development Director  
Tricia Davi, Director of Administration  
Deb Hoffmann, City Attorney  
John Redmond, Park Superintendent  
Jon Mark Bolthouse, Library Director  
Aaron Goldstein, Chief of Police  
Erik Gerritson, Fire Chief  
Kathryn Duveneck, ITS Director

Declaration a Quorum Is Present

President Brault declared a quorum present.

Pledge of Allegiance

Pledge of Allegiance was recited.

Silent Reflection

Arbor Day Proclamation

President Brault presented a proclamation proclaiming April 26, 2024 as Arbor Day in the City of Fond du Lac to John Redmond, Parks Superintendent in recognition of the aesthetic ecological usefulness of trees in our public ways and neighborhoods.

Kids To Park Proclamation

President Brault presented a proclamation proclaiming May 18, 2024 as Kids to Parks Day in the City of Fond du Lac to Parks Superintendent, John Redmond and United Way Representative Bob

Hoffmaster; and urge our entire community to participate in the events and to take the children in their lives to a neighborhood, state, or national park.

## **CONSENT AGENDA**

April 10, 2024 Minutes

April 16, 2024 Organizational Minutes

List Of Claims Dated April 17, 2024

A Motion was made by Thomas Schuessler to approve the consent agenda and seconded by Antonio Godfrey, Sr., and the motion was **Passed**.

Ayes: Brault, Godfrey, Sr., Heisler, Luehring, Mullen, Schuessler, Zimmermann

## **AUDIENCE COMMENTS (Agenda and Non-agenda items)**

Spoke In Support Of Non-Agenda Items: Expressing Gratitude To Fond du Lac High School Volunteers For Youth Service Day Participation And Regarding World Migratory Bird Week:

Laura DeGolier, 289 14th St., Fond du Lac

## **ACTION ITEMS**

April 25, 2024-October 25, 2024 Class "B" Fermented Malt Beverage License

A Motion was made by Brett Zimmermann to approve Class "B" Fermented Malt Beverage License for Fond du Lac Softball Inc. from April 25, 2024 to October 25, 2024 at Lakeside Park and seconded by Keith Heisler, and the motion was **Passed**.

Ayes: Brault, Godfrey, Sr., Heisler, Luehring, Mullen, Schuessler, Zimmermann

Resolution No. 9121

File No. 2024-003

A Motion was made by Antonio Godfrey, Sr. to approve Resolution No. 9121 A Resolution Making Reappointments To The Advisory Parking & Traffic Board And Plan Commission and seconded by Keith Heisler, and the motion was **Passed**.

Ayes: Brault, Godfrey, Sr., Heisler, Luehring, Mullen, Schuessler, Zimmermann

Resolution No. 9122

File No. 2024-003

A Motion was made by Thomas Schuessler to approve Resolution No. 9122 A Resolution Appointing A Weed Commissioner For The City Of Fond du Lac and seconded by Antonio Godfrey, Sr., and the motion was **Passed.**

Ayes: Brault, Godfrey, Sr., Heisler, Luehring, Mullen, Schuessler, Zimmermann

#### **PRESENTATION OF INPUT ITEMS**

City of Fond du Lac Update

City of Fond du Lac Update was presented by City Manager, Joe Moore.

#### **ADJOURN**

A Motion was made by Brett Zimmermann to adjourn at 6:49 p.m. and seconded by Keith Heisler, and the motion was **Passed.**

Ayes: Brault, Godfrey, Sr., Heisler, Luehring, Mullen, Schuessler, Zimmermann

Margaret Hefter  
City Clerk

**CITY COUNCIL MEETING AGENDA  
CITY OF FOND DU LAC, WISCONSIN**

Title: List Of Claims Dated May 1, 2024

Subject: List Of Claims Dated May 1, 2024

Initiator:

Recommendation:

**ATTACHMENTS:**

File Name

List\_of\_Claims\_Memo\_05-01-24.pdf

# ***CITY OF FOND DU LAC - Memorandum***

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## **Department of Administration**

**Date:** May 01, 2024

**To:** City Council

**From:** Tricia Davi, Director of Administration

**Re:** List of Claims

The list of claims for goods and services for the payment periods April 13, 2024 through April 26, 2024 for all funds total \$1,371,562.12. Wisconsin statute 66.0609 (2) requires the comptroller to file, at least monthly with the City Council, a list of approved claims paid.

Suggested Motion: Receive and File



**CITY COUNCIL MEETING AGENDA  
CITY OF FOND DU LAC, WISCONSIN**

Title: Resolution No. 9123

Subject: A Resolution Waiving The Prohibition Against Possession  
Of Alcoholic Beverages On Specified Public Ways And  
Allowing A Temporary Expansion Of Premises For Thelma At  
51 Sheboygan Street On June 6, 13, 20, And 27, 2024 For  
Free Concerts  
Introduction: City Clerk

Initiator:

Recommendation:

**ATTACHMENTS:**

File Name

9123\_Thelma\_June\_2024\_Waiver\_and\_Expansion\_of\_Premises\_FINAL.pdf

Thelma.pdf

## **RESOLUTION NO. 9123**

### **A RESOLUTION WAIVING THE PROHIBITION AGAINST POSSESSION OF ALCOHOLIC BEVERAGES ON SPECIFIED PUBLIC WAYS AND ALLOWING A TEMPORARY EXPANSION OF PREMISES FOR THELMA AT 51 SHEBOYGAN STREET ON JUNE 6, 13, 20, AND 27, 2024 FOR FREE CONCERTS**

**WHEREAS**, Thelma will be hosting free concerts on June 6, 13, 20, and 27, 2024 and requests the waiver of prohibition against possession of alcoholic beverages on specified streets and a temporary expansion of premises for their licensed establishment; and

**WHEREAS**, Section 400-15 of the Code of the City of Fond du Lac allows the City Council to grant permission to waive the prohibition against public consumption of alcoholic beverages in City streets; and

**WHEREAS**, Section 125.51(3)(d), Wis. Stats., allows the City Council to temporarily expand the described licensed premises; and

**WHEREAS**, Thelma requests a waiver of the prohibition against public consumption on Sheboygan Street between Marr Street to Portland Street and a temporary expansion of premises as shown on the attached map on June 6, 13, 20 and 27, 2024 between the following hours:

6:00 p.m. to 10:00 p.m.; and

**WHEREAS**, the above-described waiver and temporary expansion of premises for these concerts is contingent upon Thelma obtaining a Special Event permit for the events pursuant to Chapter 562 of the Code of the City of Fond du Lac and complying with all regulations contained within and related to Chapter 562 for Special Events; and

**NOW, THEREFORE, BE IT RESOLVED** that the prohibition against public consumption of alcoholic beverages in City streets and temporary expansion of premises for the dates and hours listed above are hereby waived and granted, and are contingent upon Thelma obtaining a Special

Event permit for the event pursuant to Chapter 562 of the Code of the City of Fond du Lac and complying with all regulations contained within and related to Chapter 562 for Special Events.

**BE IT FURTHER RESOLVED** that notwithstanding anything in this Resolution, no glass containers or carry-ins are permitted in the described street areas, meaning that the prohibition contained in Code Section 400-15., shall continue to apply to glass containers and carry-ins.

**BE IT FURTHER RESOLVED** that proper City officials and/or City staff are hereby authorized and directed to take any necessary actions in furtherance hereof and in support of such request.

**ADOPTED:**

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Tiffany Brault, President  
Fond du Lac City Council

Attest:

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Margaret Hefter, City Clerk

City Attorney:

Reviewed DSM

# THELMA

THELMA SADOFF CENTER FOR THE ARTS

April 15, 2024

To the Fond du Lac City Council,

Each Thursday from June 6<sup>th</sup> till September 5<sup>th</sup> 2024, Thelma Sadoff Center for the Arts (THELMA) will be a site for 13 Thursdays Summer Concert Series on Sheboygan Street between Marr Street and Portland Street. Sheboygan Street will feature snow and ice sculptors. We have requested the city of Fond du Lac to allow Sheboygan Street to be closed from Marr Street to Portland Street.

THELMA is requesting the City of Fond du Lac suspend the ordinance that forbids the consumption of alcohol in public from 6:00 PM until 10:30 PM on each Thursday from June 6<sup>th</sup> till September 5<sup>th</sup> 2024. The area effected by the suspension of the ordinance will be the street and sidewalks of Sheboygan Street from Marr Street to Portland Street. Portland and Marr Street will remain open.

Beginning immediately after the conclusion of the event, THELMA will clean the area and remove all debris created by the events. THELMA will disallow guests to bring their beverages outside of the designated event area and will cease serving beverages at 10:00pm.

Thank you for your consideration of this matter.

Respectfully submitted,



Shannon Kupfer  
Executive Director



920.921.5410



info@thelmaarts.org



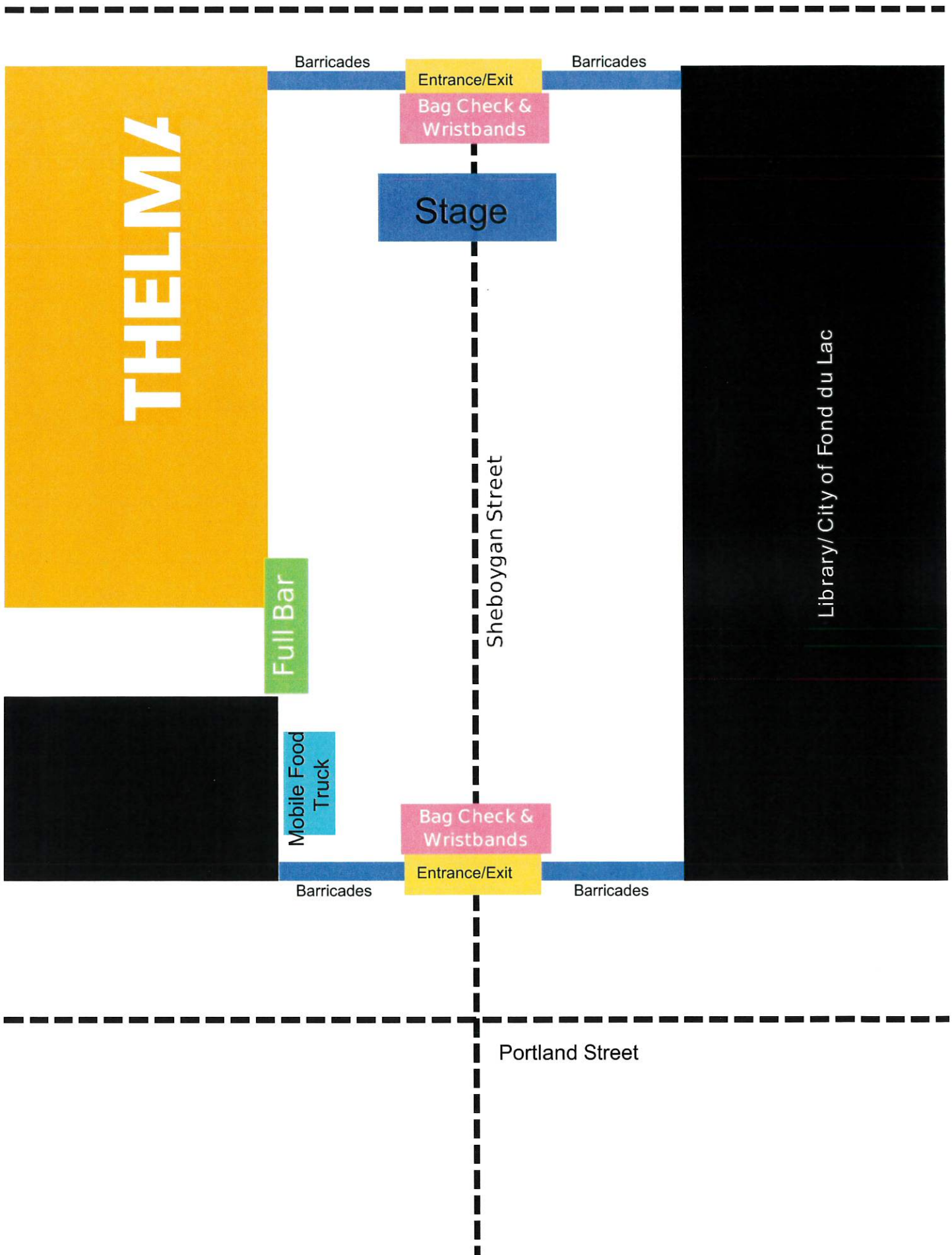
thelmaarts.org



51 Sheboygan St  
Fond du Lac, WI 54935

**ENRICHING** our  
**COMMUNITY**  
through **THE**  
**ARTS**

Marr Street



**CITY COUNCIL MEETING AGENDA  
CITY OF FOND DU LAC, WISCONSIN**

Title: Resolution No. 9124

Subject: A Resolution Waiving The Prohibition Against Possession  
of Alcoholic Beverages On Specified Public Ways For  
Thelma At 51 Sheboygan Street On July 11, 18, And 25,  
2024; August 1, 8, 15, 22, And 29, 2024; And September  
5, 2024, For Free Concerts  
Introduction: City Clerk

Initiator:

Recommendation:

**ATTACHMENTS:**

File Name

9124\_Thelma\_July\_through\_September\_2024\_Waiver\_only\_FINAL.pdf

Thelma.pdf

## **RESOLUTION NO. 9124**

### **A RESOLUTION WAIVING THE PROHIBITION AGAINST POSSESSION OF ALCOHOLIC BEVERAGES ON SPECIFIED PUBLIC WAYS FOR THELMA AT 51 SHEBOYGAN STREET ON JULY 11, 18, AND 25, 2024; AUGUST 1, 8, 15, 22, AND, 29, 2024; AND SEPTEMBER 5, 2024, FOR FREE CONCERTS**

**WHEREAS**, Thelma will be hosting free concerts on July 11, 18, and 25, 2024; August 1, 8, 15, 22, and 29, 2024; and September 5, 2024, and requests the waiver of prohibition against possession of alcoholic beverages on specified streets; and

**WHEREAS**, Section 400-15 of the Code of the City of Fond du Lac allows the City Council to grant permission to waive the prohibition against public consumption of alcoholic beverages in City streets; and

**WHEREAS**, Thelma will include an expansion of their licensed premises in their 2024-2025 alcohol license renewal; and

**WHEREAS**, Thelma requests a waiver of the prohibition against public consumption on Sheboygan Street between Marr Street to Portland Street on July 11, 18, and 25, 2024; August 1, 8, 15, 22, and 29, 2024; and September 5, 2024, between the following hours:

6:00 p.m. to 10:00 p.m.; and

**WHEREAS**, the above-described waiver is contingent upon Thelma obtaining a Special Event permit for the events pursuant to Chapter 562 of the Code of the City of Fond du Lac and complying with all regulations contained within and related to Chapter 562 for Special Events; and

**NOW, THEREFORE, BE IT RESOLVED** that the prohibition against public consumption of alcoholic beverages in City streets for the dates and hours listed above is hereby waived and is contingent upon Thelma obtaining a Special Event permit for the event pursuant to Chapter 562 of

the Code of the City of Fond du Lac and complying with all regulations contained within and related to Chapter 562 for Special Events.

**BE IT FURTHER RESOLVED** that notwithstanding anything in this Resolution, no glass containers or carry-ins are permitted in the described street areas, meaning that the prohibition contained in Code Section 400-15., shall continue to apply to glass containers and carry-ins.

**BE IT FURTHER RESOLVED** that proper City officials and/or City staff are hereby authorized and directed to take any necessary actions in furtherance hereof and in support of such request.

**ADOPTED:**

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Tiffany Brault, President  
Fond du Lac City Council

Attest:

---

Margaret Hefter, City Clerk

City Attorney:

Reviewed 



# THELMA

THELMA SADOFF CENTER FOR THE ARTS

April 15, 2024

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Thank you for your consideration of this matter.

Respectfully submitted,



Shannon Kupfer  
Executive Director



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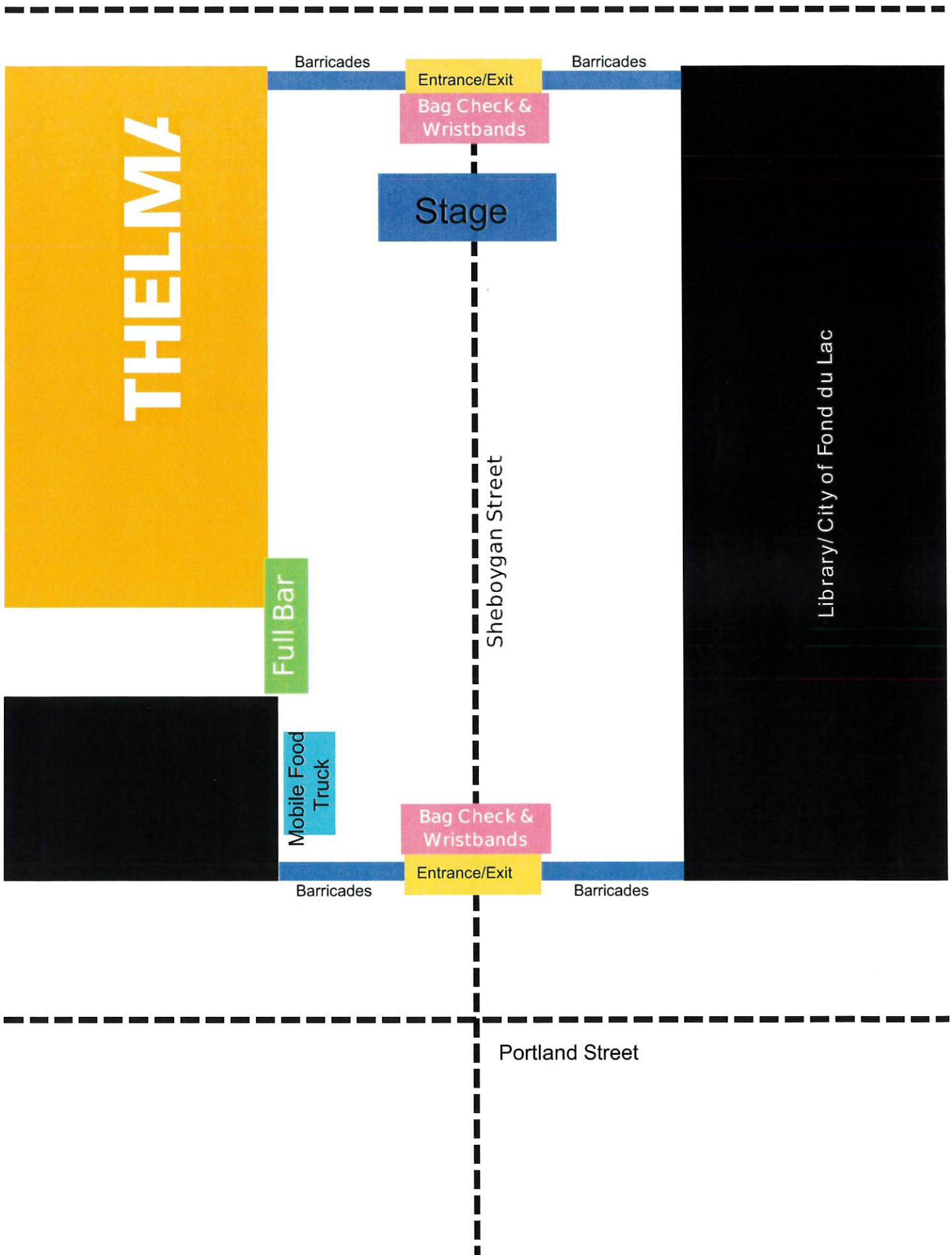
thelmaarts.org



51 Sheboygan St  
Fond du Lac, WI 54935

**ENRICHING** our  
**COMMUNITY**  
through **THE**  
**ARTS**

Marr Street



**CITY COUNCIL MEETING AGENDA**  
**CITY OF FOND DU LAC, WISCONSIN**

Title: Destination Lake Winnebago Region Update

Subject: Presented By: Craig Molitor

Initiator:

Recommendation:

**CITY COUNCIL MEETING AGENDA  
CITY OF FOND DU LAC, WISCONSIN**

Title: Archive Social Media Update

Subject: Presented By: City Attorney

Initiator:

Recommendation:

**ATTACHMENTS:**

File Name

2021-

52\_Postponed\_Resolution\_No.\_8933\_A\_Resolution\_Creating\_Social\_Media\_and\_Archiving\_Policy\_For\_Elected\_Officials\_\_\_\_.pdf

**RESOLUTION NO. 8933**

(postponed April 14, 2021)

**A RESOLUTION CREATING SOCIAL MEDIA AND  
ARCHIVING POLICY FOR ELECTED OFFICIALS**

**WHEREAS**, the City of Fond du Lac would benefit from having a Social Media and Archiving policy for Elected Officials; and

**WHEREAS**, the City of Fond du Lac previously reviewed and discussed the draft Social Media and Archiving policy on March 24, 2021; and

**WHEREAS**, the attached revised policy reflects the discussion from the March 24, 2021 meeting.”

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Fond du Lac that the attached “City of Fond du Lac Social Media and Archiving Policy for Elected Officials” as shown in Exhibit A is hereby approved and adopted.

**ADOPTED:****MAY 12 2021**

Kay Miller, President  
Fond du Lac City Council

Attest:



Margaret Hefter, City Clerk

City Attorney:

Reviewed 

## **EXHIBIT A**

### **City of Fond du Lac Social Media and Archiving Policy for Elected Officials April 7, 2021**

- I. Purpose and Scope.** To address the fast-changing landscape of the Internet and the way citizens communicate with their elected local government officials and obtain information online, the City of Fond du Lac City Councilmembers may choose to use social media technologies. It is the policy of the City Council that a standard for interaction with social media tools and their associated technology is hereby established.
- II. Councilmembers are not required to have a Social Media account or Facebook page under this policy. If they choose to discuss City business or issues on social media, they do need to use a City Social Media account or Facebook page in order to archive the posts/tweets or pages and provide same if requested under the public records law.**
- III. Procedure for Requesting and Maintaining Social Media Accounts/Facebook Pages for Elected Officials**
  - a. Councilmembers considering developing a Social Media account or Facebook page must submit a written proposal to the City Clerk's Office. Once approval has been received, the City Clerk's Office will provide written or signed authorization to proceed to the Councilmember within a reasonable amount of time.
  - b. After receiving approval from the City Clerk's Office, all Councilmembers' Social Media account/Facebook page names and passwords must be provided to the City Clerk and Director of ITS. If/when the username and password is changed, the new information must be provided to the City Clerk and Director of ITS as soon as possible.
  - c. Councilmembers must use a City-assigned email address to establish and maintain their Social Media account or Facebook page.
  - d. When using Facebook, Councilmembers may only create a Facebook page, not a Facebook profile.
- IV. Security**
  - a. Councilmembers are responsible for their respective Social Media accounts and Facebook pages, and must secure or set privacy settings for the account/page so that only the Councilmember assigned to the account/page can post to the site. Councilmembers should take appropriate steps to minimize security risks in order to prevent fraud or unauthorized access to Social Media accounts and Facebook pages.
- V. Crisis Management – What to do if a City-related Social Media account or Facebook page is hacked**
  - a. Immediately notify ITS. Use the ITS HelpDesk email.
  - b. Immediately try to regain access to the account/page.
  - c. Once access to the account/page is obtained, change the password.

- d. Delete messages posted by hackers.
- e. Let followers know that the account/page was hacked and what is being done to fix the issue.
- f. Review account/page holder's third-party apps. These could be used by hackers to gain access to accounts.

#### **VI. Ownership of Social Media Accounts/Facebook Pages when an Elected Official's Service Ends**

- a. The City of Fond du Lac will host a Councilmember's Social Media account or Facebook page from the date of creation under Subsection II of this policy through the Councilmember's end of service. Upon a Councilmember's end of service, their Social Media account or Facebook page will be deactivated. A Councilmember's Social Media account or Facebook page will remain archived through the City's ArchiveSocial program for the required time period under Wisconsin Public Records law.
- b. Councilmembers who wish to receive a copy of records generated on their City Social Media account or Facebook page during their service should contact the City Attorney's Office.

#### **VII. Public Records**

- a. Each Councilmember is a records custodian under Wisconsin's Public Records law with a duty to preserve public records and produce them if requested. See Wis. Stat. Sec. 19.21 and Wis. Stat. Sec. 19.32(1). All social media content related to City business shall be maintained in an accessible format so that it can be readily produced in response to a public records request.
- b. Any content maintained in a social media format that is related to City business is a public record and is subject to Wisconsin public records laws. **This includes, but is not limited to, any content posted on a Councilmember's personal social media site or other site that is related to City business.**
- c. The City Clerk's Office, the City Attorney's Office and the ITS Department will assist in responding to public records requests for Councilmember social media content.
  - i. Staff will pull all content connected to a Councilmember's Social Media account or Facebook page that is established pursuant to this policy from ArchiveSocial.
  - ii. **Councilmembers will provide City staff with all other social media content that is related to City business and is responsive to the public records request.**
- d. Wisconsin State law and relevant City records retention schedules apply to social media formats and their content.

#### **VIII. Use Guidelines and Legal Implications**

- a. Councilmembers representing the City of Fond du Lac on social media platforms should act, communicate, and execute their duties professionally at all times. Councilmembers must not use City-related social networking sites for non-City

related political purposes, to conduct private commercial transactions, or to engage in private business activities.

b. Limited Public Forum

- i. City Social Media accounts and Facebook pages constitute limited public forums with certain First Amendment protections associated with them. Accordingly, Councilmembers may only delete or remove posts or other information on their Social Media account or Facebook page when the content is deemed profane, threatening, inappropriate, discriminatory, or can be classified as “hate speech.” **Comments cannot be deleted simply because it is deemed to be negative.**
- ii. If you believe there is any inappropriate content being posted on a City Social Media account or Facebook page **do not delete the content.** Councilmembers should promptly report any alleged inappropriate content to the City Attorney’s Office and Clerk’s Office for review.

c. Posted User Guidelines. Each Councilmember must post the following User Guidelines on their City-related Social Media account or Facebook page:

- i. No comments will be allowed that use inappropriate or derogatory language.
- ii. No comments will be allowed that discriminates based on race, color, national origin, religion, gender, age, disability, sexual orientation, veteran's status, or any other protected class.
- iii. Any profile that harasses another user of this profile or is in violation of the comment guidelines will be removed from the site.
- iv. Any profile that appears to violate any terms of the hosting site will be reported to site administrators.
- v. Any comments that appear to be spam or advertising solicitation will be removed from the site.
- vi. City of Fond du Lac social media sites are subject to applicable Wisconsin Public Records Law and can be disclosed to third parties. Social media sites shall clearly indicate that any content posted or submitted for posting are subject to public disclosure.

d. Copyright. Copyright violation risks of video footage and photos uploaded by Councilmembers can be mitigated by following these standard operating procedures:

- i. Use only photos and videos produced by the City or contractors working directly on behalf of the City.
- ii. If copyrighted materials are used, be sure to get and maintain physical records of copyright licenses and honor any branding or labeling requirements specified in the copyright license.

e. Privacy. To best protect the privacy rights of members of the public, Councilmembers should not follow private citizens or commercial profiles from within their Social Media accounts or Facebook pages. While we cannot necessarily stop all people from being Friends, Fans or Following us, we should not click onto the profiles of our Friends, Fans and Followers.



# ***CITY OF FOND DU LAC - Memorandum***

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**City Attorney/Human Resources Department**

**Date:** April 8, 2021

**To:** City Council

**From:** Alexandra Klimko, Assistant City Attorney

**Re:** Social Media Use Webinars for Elected Officials

The City Attorney's Office and ITS Department have been working on a Social Media Policy for Elected Officials prior to implementing ArchiveSocial in April 2021. During the March 24<sup>th</sup> City Council meeting, Councilmembers asked City staff for additional guidelines related to City Council social media use.

ArchiveSocial conducts monthly recorded webinars on relevant social media topics. We recommend that Councilmembers watch the below webinars. If you have any specific questions about the topics covered in the webinars, please reach out to the City Attorney's Office.

## **1) Social Media for Elected Officials: What's "personal" & What's "public"**

**Link:** <https://archivesocial.com/webinars/social-media-for-elected-officials-whats-personal-whats-public/>

### ***Topics Covered:***

- "Personal" vs. "Private" on Facebook
  - Personal = a Facebook profile represents an individual person. Profiles have friends, make posts, and can limit who can see the profile/posts.
  - Private = a Facebook page represents an office, agency or public figure in their official capacity. Anyone can see a Facebook page; you cannot make it private.
  - \*Tip: Only Facebook pages should be used by elected officials to conduct official business. Use of Facebook profiles for official business puts an elected official in legal jeopardy because they limit who can view the profile and interact with the elected official.
- 3 Major Risk Areas on Facebook for Elected Officials
  1. Viewpoint Discrimination is prohibited under the First Amendment.
    - Viewpoint Discrimination = Removing content or blocking users based solely on a person's opinion. Opinions are protected speech.

- Only a very limited set of topics is not protected under the First Amendment including obscenity, direct threats of violence, and commercial postings.
- 2. If you discuss official business on social media, you are creating a public record that your public entity is required to produce under Public Records law.
  - Problem = People may delete or change comments/posts on your page. These are still public records and the elected official must be able to produce those comments/posts.
- 3. Elected officials should never mix personal and professional content on Facebook.

## 2) The First Amendment & Social Media: Tips to Avoid Risk

**Link:** <https://archivesocial.com/webinars/the-first-amendment-social-media-tips-to-avoid-risk/>

### ***Topics Covered:***

- Types of Comment Moderation on Social Media → Deleting, Hiding, and Blocking
- First Amendment Comment Moderation Caution Areas
  - Negative comments
    - You cannot delete or hide a post just because you deem it to be negative. This is viewpoint discrimination, which is prohibited by the First Amendment.
  - Rumors, Lies and Misinformation
    - Gently respond to the comment with correct information and redirect the commenter off-line to discuss.
  - Hate Speech
    - Hate speech is legally protected free speech under the First Amendment per the US Supreme Court. Unfortunately, there is no specific definition of hate speech.
    - Facebook's community standards regulate hate speech. You can report a comment or post you believe to be hate speech to Facebook.
- Areas that are "Safer" Areas for Comment Moderation. Check with your Legal Counsel and Social Media Policy on if Comment Moderation is allowed.
  - Commercial Solicitation/Advertisement
  - Malware/Phishing
  - Personally Identifiable Information (PII)
  - Cyber Bullying
  - Off-Topic/Spam

- Areas that Have No First Amendment Protection. Comment Moderation is allowed.
  - Obscenity
  - Direct threats
  - Intellectual Property or Copyrights
  - Inciting Illegal Acts
  - Defamation (but be careful – negative opinions are not defamatory. Check with your Legal Counsel to see if the post meets the defamation standard.)
- Potential Consequences of Unjustified Comment Moderation
  - Lawsuit against both you, your public agency, or both
  - Erosion of Public Trust
  - Increased ongoing scrutiny
  - Potential state constitution violations and fines
  - Added stress to you and your team
- Compliant Tactics to Navigating Difficult Conversations
  - Be consistent when deleting, hiding, or blocking things on social media.

### 3) Trolls and Their Toll on Social Media Communicators

**Link:** <https://archivesocial.com/webinars/trolls-and-their-toll-on-social-media-communicators/>

#### **Topics Covered:**

- Different Types of People Encountered on Social Media
  - Supporters = encourage their colleagues to follow you, and often like and share your posts
  - Critics = point out your perceived mistakes or typos
  - Upset Followers = followers who have a legitimate complaint that you may be able to turn around
  - Complainers = annoying but harmless; generally complain about everything
  - Haters = hate your organization and possibly hate you personally
  - Trolls = make personal attacks and are off topic, are profane, and attempt to deliberately engage you
- Best Practices for Dealing with Trolls
  - Don't react emotionally. Refer to your Social Media policy for guidance. Based on your policy, you may be able to ignore, respond, hide or delete the content.
  - Respond with facts while staying polite and professional. Try to steer all negative conversations offline (e.g., phone call, email)
  - Treat carefully if responding with humor. This can be misinterpreted by different people.

## QUICK GUIDE

# Social Media for Public Officials 101

Government officials are increasingly using social media to share information with the public, and to allow members of the public to communicate with them about matters relating to government. In a recent case, the Supreme Court described social media platforms as “the modern public square,” noting that these platforms afford users the opportunity to “petition their elected representatives and otherwise engage with them in a direct manner.”

Government officials who use social media accounts to carry out their official duties are engaged in “state action” and are therefore bound by the First Amendment. Thus, one federal appeals court recently held that President Trump’s Twitter account is a “public forum” for First Amendment purposes, and that the president’s practice of blocking users from the account on the basis of viewpoint is unconstitutional. Another federal appeals court reached essentially the same conclusions in a case involving a county official’s Facebook page. Almost all of the courts that have addressed the issue have relied on the same basic analytical framework.

In this document, we offer some guidance to public officials who use, or want to use, social media in connection with their official duties. What we offer here isn’t legal advice—if you’re a public official, you should read our guidance, but you should also consult your own attorney. The guidance we provide here is meant to help public officials derive the benefits of social media, and navigate some of the challenges associated with social media, without running afoul of the First Amendment.

Our guidance is informed by settled legal principles as well as recent court decisions. This said, it’s important to note that the technology of social media is new and evolving, that many questions about how the First Amendment should apply to this technology have yet to be resolved by the courts, and that some of these questions are genuinely difficult. We anticipate amending this guidance as the law, technology, and our own thinking evolve.

# 1. If you want your social media account to remain “personal,” don’t use it for official purposes.

Public officials don’t surrender their First Amendment rights by entering public service. If you’d like to, you can maintain a personal social media account and use it to discuss your family, your golf game, or your thoughts as a citizen about world affairs. And like any other user of social media, you can block followers from a personal account for any reason you want to.

If you use your social media account for official purposes, though, the First Amendment restricts you from doing some of the things you could do with a purely personal account. Our advice: If you don’t want to be bound by the First Amendment, don’t use your social media account as an extension of your office. Don’t use it to make announcements about your official responsibilities or actions. Don’t use it to solicit the public’s views about what legislation you should introduce or support, or whom you should appoint to an official government post, or whether you should vote to impeach the president. Don’t use it to carry out your duties—to call official meetings, for example, or to issue orders that you have the authority to issue only because of your government position.

In deciding whether you are using your account for official purposes, courts are likely to look to the way you use, administer, and present the account, not just the label you give to it. It’s not enough for you to simply declare that your social media account is “personal” if in fact you use the account to carry out the duties of your office. In assessing whether you are using your account for official purposes, courts are likely to consider:

- **How you use the account.** Do you use your account to communicate information about your official duties and to solicit information from constituents and the general public related to those duties?
- **Whether you use government resources in connection with your account.** Does your staff help you with your account by, for example, drafting, reviewing, or posting social media messages, or otherwise managing the account? Do you use government equipment or other government resources in operating your account? Do you use your account while carrying out your official responsibilities—for example, while attending events in your official capacity?
- **How you present the account.** Do you associate the account with your official position by, for example, including your official title in your account description, or using a profile picture that shows you acting in your official capacity? Do you refer to the account as “official,” or direct constituents or others to it in a way that suggests that the account is an extension of your office?

Courts are likely to evaluate whether your account reflects state action by looking to the totality of the circumstances—that is, by looking to all of these factors, and perhaps others. If you want to maintain both a personal account and an official one, you should maintain a clear separation between the two.

## **2. Don't block users or delete comments just because they criticize you.**

If you use your account as an extension of your office, the First Amendment prohibits you from blocking people from the account—or suppressing or deleting their comments, or otherwise penalizing them—because of their viewpoints.

Multiple courts have held that social media accounts used for official purposes are “public forums” within the meaning of the First Amendment. A “public forum” is established when the government invites members of the public to speak in a space that the government owns or controls. Courts have held that the interactive features of social media accounts used for official purposes make those accounts public forums for First Amendment purposes because they enable members of the public to speak by, for example, replying to tweets or posting comments.

While there are different kinds of forums—including public forums in which all topics and speakers are allowed, and “limited” public forums, in which the government restricts which speakers can participate or which topics can be addressed—one rule that applies to all First Amendment forums is that the government may not stop people from speaking in them on the basis of their viewpoints. The rule against viewpoint discrimination ensures that people aren't excluded from public discourse simply because their views are controversial or disagreeable to others. It also helps ensure that government officials don't insulate themselves from the opinions of the people whom they are supposed to represent.

One related point is worth making here. Social media companies sometimes remove speech from their platforms that you, as a public official, couldn't lawfully suppress or block. Because the companies are private actors, their conduct is generally not subject to First Amendment limitations. But your conduct is. In our view, the First Amendment bars public officials from directing or encouraging platforms to take down speech that the officials couldn't constitutionally take down themselves. If the First Amendment bars you from suppressing speech directly, it bars you from suppressing it indirectly, too.

Our advice: If you use your account for official purposes, don't discriminate on the basis of viewpoint. It's undemocratic and unconstitutional.

### **3. Have a social media policy, make it public, and follow it.**

If you use your social media account for official purposes, you should adopt policies for the account and post those policies publicly. Posting your policies publicly will let your followers (and others) know how you intend to use the account, and how you hope others will use the forum established by the account. Your policies should explain:

- **The general purposes you hope the account will serve;**
- **Any limitations on what users may post in the comment threads; and**
- **How you will address violations of those limitations.**

Make your policies as clear as possible. Be especially careful with the words you use to describe any limitations on what users may post in the comment threads. Policies that use words or phrases susceptible to multiple interpretations don't give users sufficient notice of what speech is allowed and what speech is disallowed, and those policies will be vulnerable to constitutional challenge. More on this below.

It's important to understand that the rule against viewpoint discrimination applies not just to your policies but also to your enforcement of those policies. In other words, the First Amendment prohibits you from adopting a policy that discriminates on the basis of viewpoint, but it also prohibits you from enforcing a non-discriminatory policy in a way that discriminates on the basis of viewpoint.

### **4. If you limit what your followers can post, the limits should be reasonable and viewpoint-neutral, and enforced consistently.**

As a public official, you may be subjected to speech that is pointed, disparaging, critical, mocking, unfair, cheap, dishonest, false, abusive, outrageous, and offensive. You can of course call out this speech and respond to it. As a general matter, though, you can't suppress it. For good reasons, the First Amendment provides very broad protection to political speech, and the courts have been especially protective of speech directed at public officials.

This said, there's no question that some kinds of speech can be disruptive, discourage civic participation that's important to our democracy, and make a public forum less useful than it might otherwise be. On social media, abuse and harassment are signifi-

cant problems, especially for women and minorities. There are measures you can take to address some categories of speech that can be especially disruptive.

- **You can disallow content that falls outside the protection of the First Amendment—for example, “true threats” and “obscenity.”** These are narrow categories, but they are broad enough to encompass some forms of abusive and harassing speech. (“Abusive speech” and “harassing speech” are not themselves well-defined categories, and a prohibition that relied on those phrases would likely be struck down as unconstitutionally vague.)
- **You can impose reasonable and viewpoint-neutral rules relating to the “time, place, or manner” of speech.** Though no court has addressed the issue, we think that the First Amendment would permit you to place a reasonable limit on the number of times any given user can comment on one of your posts. A restriction like this might help ensure that a comment thread doesn’t get hijacked by a single speaker.
- **You can impose limitations on the topics that can be addressed in the forum, so long as the limitations are viewpoint-neutral and reasonable in light of the purpose of the forum.** We think that the First Amendment would allow you to restrict people from posting advertisements, promotions, and solicitations of commercial products and services. And we think it would allow you to require users to stay “on topic” on a post-by-post basis, so long as you enforce the limitation consistently and in a viewpoint-neutral way. An “on-topic” requirement may give you a tool for addressing at least some kinds of abusive and harassing speech.
- **You may also be able to limit who can speak in the forum, so long as the limitations are viewpoint-neutral and reasonable in light of the purpose of the forum.** For example, if you have a reliable way of differentiating constituents from others, the First Amendment might permit you to restrict the forum to your constituents.

We believe that the kinds of restrictions described above could be defended against a First Amendment challenge—assuming (yet again) that you enforce them consistently and in a viewpoint-neutral manner. Still, you should think carefully before adopting any of these restrictions. Consider whether the restriction you have in mind could suppress speech that is important, even if it’s inconvenient or offensive. Consider whether the restrictions would insulate you or your followers from views you should hear, or deprive you of information that you or your followers should know. Also consider whether you have the time and resources to enforce the restrictions. If you have millions of followers and no social-media staff, it may not be feasible for you to enforce these kinds of restrictions consistently, and inconsistent enforcement will be vulnerable to First Amendment challenge.



## 5. If you moderate speech on your account, don't forget due process.

If you restrict the kind of content that can be posted by others in the comment threads associated with your account, you should make clear in your publicly posted social media policy that you will notify users if you determine they have violated your policies. When you provide notice, the notice should:

- **Specify the provision of your policy you believe the user has violated;**
- **Include a copy of the content you believe violated the policy;**
- **If it isn't readily apparent, explain why the content violated the provisions you've cited;**
- **Explain what measures you've taken, or will take, in response to the violation; and**
- **Explain how the user can challenge your decision.**

The consequence for violating the terms of your social media use policy should be tailored to the violation, taking into account whether the user can correct the issue, and whether the user has violated the same policy in the past.

You should block users only as a last resort, because blocking prevents the blocked users from speaking at all in the forum. You should consider whether less severe restrictions—like “muting” users, or “hiding” replies, both of which are possible on Twitter—would achieve what you want to accomplish. We recommend that, if you block people from your account for violation of your policies, you block them for only brief periods. You should block people for longer periods only if they violate your policies repeatedly.

\* \* \*

Again, we anticipate updating this document as technology evolves and the courts consider questions they haven't yet addressed. If you have questions about, or reactions to, anything we've written here, we'd like to hear from you. You can write to us at [info@knightcolumbia.org](mailto:info@knightcolumbia.org).

**CITY COUNCIL MEETING AGENDA  
CITY OF FOND DU LAC, WISCONSIN**

Title: City of Fond du Lac Website Overview

Subject: Presented By: City Manager

Initiator:

Recommendation: