



MEMORANDUM

AGENDA ITEM #6b)1

DATE: AUGUST 3, 2009
TO: EXECUTIVE COMMITTEE
FROM: SAMUEL S. GOREN, ESQ.
SUBJECT: FACEBOOK MATTERS

Please find attached backup information regarding the legality of the Council establishing and maintaining a Facebook page.

Recommendation

For discussion only.

GOREN, CHEROF, DOODY & EZROL, P.A.

ATTORNEYS AT LAW

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PLEASE REPLY TO FORT LAUDERDALE

July 13, 2009

VIA EMAIL (rnoah@sfrpc.com)

Rhonda Noah, Chief Administrative Manager
South Florida Regional Planning Council
3440 Hollywood Blvd. Suite 140
Hollywood, FL 33021

Re: South Florida Regional Planning Council ("SFRPC") / Facebook Memorandum

Dear Rhonda:

Enclosed please find a memorandum from the General Counsel's Office pertaining to the legal authority of the SFRPC to establish and maintain a Facebook page. Your assistance in transmitting the enclosed memorandum to Chairwoman Sandra Walters, the members of the Council, and Executive Director Carolyn Dekle is greatly appreciated.

Please contact our office if you have any questions or if there is any additional information that we can provide.

Sincerely,



SAMUEL S. GOREN

JGH:ssg

CC: Sandra Walters, Chair
Members of the Council
Carolyn Dekle, Executive Director

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MEMORANDUM

TO: Chair Sandra Walters
Members of the Council

CC: Carolyn Dekle, Executive Director

FROM: Samuel S. Goren, General Counsel *SSG*
Jacob G. Horowitz, Assistant General Counsel *JGH*

DATE: July 13, 2009

RE: South Florida Regional Planning Council ("SFRPC") / Facebook Matters

Pursuant to your request, the General Counsel's Office has examined whether it is legally permissible for the SFRPC to establish and maintain a Facebook page. The Attorney General recently examined the ability of a municipality to create such page and the implication such action would have on the municipality's obligations under Chapter 119, F.S., (the Public Records Act) and Section 286.011, F.S., (The Sunshine Law). A copy of Attorney General Opinion 09-19 is attached for your review. The SFRPC, like a municipality, is subject to these same statutory obligations, and AGO 09-19 offers sound guidance regarding the SFRPC's ability to utilize the services offered by Facebook.

Subject to certain limitations, the Attorney General has opined that a municipality may establish and maintain a Facebook page provided that such action serves a municipal purpose. *AGO 09-19* (April 23, 2009). Similarly, the SFRPC is **legally permitted** to create a Facebook page provided that a **legitimate public purpose** is served by the creation thereof.

In the event that the SFRPC desires to establish and maintain a Facebook page, our office would recommend that such action be initiated through the adoption of a resolution containing specific findings setting forth the necessary public purpose.

On June 2, 2009, the City of Coral Springs adopted Resolution No. 2009-017, thereby detailing the municipal purpose served through the creation of a Facebook page and authorizing the establishment thereof. A copy of the Coral Springs resolution is attached for your review.

I. THE PUBLIC RECORDS ACT

AGO 09-19 suggests that the information and material posted on a public entity's Facebook page would presumably serve a public purpose and be in furtherance of the official business transacted by that entity. Therefore, such information **would be** subject to the provisions of Chapter 119, F.S. Further, the information posted on the Facebook page would need to be retained in accordance with the applicable public records retention

schedule as provided by the Florida Department of State Division of Library and Information Services.

It is our understanding that one component of a Facebook page is the ability for "friends" to post information on pages maintained by other persons or entities. The determination as to whether such postings would be considered public records would presumably be based on whether the information posted was received by the entity in connection with official business. Our office is of the opinion that any and all information posted on a Facebook page that is maintained by a public entity **would be** subject to disclosure under the public records laws, unless such information is otherwise exempt by a specific statutory provision.

Therefore, our office would recommend that the SFRPC, or any other public entity, include a disclaimer on their Facebook page advising that any information posted is a public record and may be subject to disclosure pursuant to Chapter 119, F.S.

Additionally, please note that the State Division of Library and Information Services has not provided a retention schedule for information posted in an online forum. Therefore, we would recommend that any information posted on a Facebook page be archived **permanently** until such time that a more definitive retention schedule has been provided by the State.

II. THE SUNSHINE LAW

Section 286.011, F.S., sets out the following three basic requirements for the conduction of business by public entities:

- (1) Meetings of public boards or commissions must be **open to the public**;
- (2) Reasonable **notice** of such meetings must be given; and
- (3) **Minutes** of the meetings must be taken.

The Attorney General has opined that while The Sunshine Law ordinarily applies to formal and informal meetings of two or more members of a collegial body, the Florida Supreme Court has also construed the law "so as to frustrate all evasive devices." *Town of Palm Beach v. Gradison*, 296 So.2d 473, 477 (Fla. 1974).

As noted in AGO 09-19, the courts and the Attorney General's Office have concluded that the physical presence of two or more members of a collegial body is **not** necessary to trigger the provisions of The Sunshine Law. The Attorney General specifically concluded that a one-way email communication from one city council member to another, when it does not result in the exchange of council members' comments or responses does not constitute a meeting subject to The Sunshine Law. See *AGO 89-39* (1989) and *AGO 01-20* (2001). Interactive emails and the exchanges of ideas in an online forum between members of the same collegial body, however, would be considered a meeting subject to The Sunshine Law.

Therefore, the exchange of ideas and interaction between members of a collegial body related to matter which may foreseeably come before the body at some future date on a Facebook page **may** similarly amount to a meeting subject to the requirements of The Sunshine Law.

To the extent that the SFRPC seeks to establish and maintain a Facebook page, the General Counsel's Office generally **advises against** members of the Council directly posting on or participating in discussions on such a page. Furthermore, members of the SFRPC simply **should not** interact directly with each in any way on any online forum regarding any matters that may come before the SFRPC at some future date.

CONCLUSION

In accordance with the conclusion of AGO 09-19, the SFRPC, as well as any other public entity, is legally permitted to establish and maintain a Facebook page under certain conditions. Such a page may be a beneficial tool for communicating directly with the public and keeping the public informed of matters related to the SFRPC.

That said, the operation and maintenance of a Facebook page must be carefully considered as all information posted thereon is a public record and must be preserved and maintained as such, unless otherwise exempt pursuant to a specific statutory provision.

Furthermore, while the operation of such a page by a public entity is not problematic, *per se*, we would advise that members of the SFRPC exercise great caution when engaging or participating in discussions on a Facebook page.

Please contact our office if there is any additional information that we can provide.

SSG/JGH

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Rhonda Noah

From: David Tolces [DTolces@cityatty.com]
Sent: Tuesday, July 14, 2009 3:58 PM
To: Richard Ogburn; Rhonda Noah
Cc: Sam Goren; Jacob G. Horowitz
Subject: Emailing: Advisory Legal Opinion - Records, municipal facebook page.htm

Florida Attorney General Advisory Legal Opinion

Number: AGO 2009-19
Date: April 23, 2009
Subject: Records, municipal facebook page

Mr. Samuel S. Goren
Coral Springs City Attorney
9551 West Sample Road
Coral Springs, Florida 33065

**RE: MUNICIPALITIES-RECORDS-GOVERNMENT IN THE SUNSHINE LAW-
INTERNET-public record implications for city's Facebook page. s.
119.011(12), Fla. Stat.; Art. I, s. 23, Fla. Const.**

Dear Mr. Goren:

On behalf of the Coral Springs City Commission, you ask the following questions:

1. If the city chooses to maintain a Facebook page, would all contents of the city's page, including information about the city's "friends" and their pictures, and the friend's respective Facebook pages, be subject to the Public Records Law, Chapter 119 Florida Statutes?
2. If Question One is answered in the affirmative, is the city obligated to follow a public records retention schedule as set forth in the State of Florida General Records Schedule GSI for State and Local Government Agencies?
3. If Question One is answered in the affirmative, is Florida's Right of Privacy, as guaranteed in Article I, section 23, Florida Constitution implicated by the inclusion of information about the city's "friends" and the respective link to the friends' Facebook pages linked to the city's page?

7/14/2009

4. Would communications on the city's Facebook page regarding city business be subject to Florida's Government in the Sunshine Law, section 286.011, Florida Statutes?

In sum:

1. Since the city is authorized to exercise powers for a municipal purpose, the creation of a Facebook page must be for a municipal, not private purpose. The placement of material on the city's page would presumably be in furtherance of such purpose and in connection with the transaction of official business and thus subject to the provisions of Chapter 119, Florida Statutes. In any given instance, however, the determination would have to be made based upon the definition of "public record" contained in section 119.11, Florida Statutes. Similarly, whether the Facebook page of the friends would also be subject to the Public Records Law, Chapter 119, Florida Statutes, would depend on whether the page and information contained therein was made or received in connection of the transaction of official business by or on behalf of a public agency.

2. The city is under an obligation to follow the public records retention schedules established by law.

3. While Article I, section 23, Florida Constitution, may be implicated in determining what information may be collected by the city, the constitutional provision expressly states that "[t]his section shall not be construed to limit the public's right of access to public records and meetings as provided by law." Thus, to the extent that information on the city's Facebook page constitutes a public record within the meaning of Chapter 119, Florida Statutes, Article I, section 23, Florida Constitution, is not implicated.

4. Communications on the city's Facebook page regarding city business by city commissioners may be subject to Florida's Government in the Sunshine Law, section 286.011, Florida Statutes. Thus, members of a city board or commission must not engage on the city's Facebook page in an exchange or discussion of matters that foreseeably will come before the board or commission for official action.

You state that Facebook is a social networking website maintained by privately-owned Facebook, Inc., which allows users to create profiles that include personal interests and pictures. According to your letter, Facebook allows users to build networks of "friends" which allows such friends, once they have been added to the user's profile, to appear on the user's profile. Facebook also contains interactive features, including instant messaging and a "Wall" which allows friends to post messages and attachments which

may be viewed by anyone who may view the user's profile.

As you have not provided this office with a specific fact situation, my comments must be general in nature.

Question One

Section 166.021(1), Florida Statutes, sets forth the authority of municipalities, stating:

"As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for *municipal purposes*, except when expressly prohibited by law." (e.s.)

The Florida Supreme Court has stated that this constitutional provision "expressly grants to every municipality in this state authority to conduct municipal government, perform municipal functions, and render municipal services." [1] The only limitation on the power of municipalities under this constitutional section is that such power must be exercised for a valid municipal purpose. [2] The determination of what constitutes a valid municipal purpose for the expenditure of public funds is one that must be made by the city commission and cannot be delegated to this office. [3] In making this determination, the commission must make appropriate legislative findings.

Accordingly, the city would appear to have the authority to establish a Facebook page under its home rule powers provided the establishment of such a page is for a valid municipal purpose and the city commission has made the appropriate legislative findings. You have not advised this office as to the nature of the information that will be contained on the city's page. Section 119.011(12), Florida Statutes, however, defines "Public records" for purposes of Chapter 119, Florida Statutes, to include

"all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge. [4] It is the nature of the record created rather than the means by which it is created which

determines whether it is a public record. [5] The placement of information on the city's Facebook page would appear to communicate knowledge. Thus, the determination in any given instance as to whether information constitutes a public record will depend on whether such information was made or received in connection with the transaction of official business by the city.

As noted above, you have not advised this office as to what will be placed on the Facebook page. Inasmuch as the page must be established for a municipal purpose and in the absence of specific information as to the material placed on the city's Facebook page, this office presumes that the information contained on the page would be made or received in connection with the official business of the city. I recognize that the Florida Supreme Court ruled that private e-mail stored in government computers does not automatically become a public record by virtue of that storage:

"Just as an agency cannot circumvent the Public Records Act by allowing a private entity to maintain physical custody of documents that fall within the definition of "public records," . . . private documents cannot be deemed public records solely by virtue of their placement on an agency-owned computer." [6]

Therefore, there may be material placed on the city's Facebook page that is personal and does not relate to the transaction of official business. However, as noted above, the creation of a Facebook page must be for a municipal, not private, purpose. Accordingly, the placement of material on the city's page would presumably be in furtherance of such purpose and in connection with the transaction of official business and thus subject to the provisions of Chapter 119, Florida Statutes. In any given instance, however, the determination would have to be made based upon the definition of "public record" contained in section 119.011, Florida Statutes, as defined by the courts.

You also inquire whether the Facebook page of the friends would also be subject to the Public Records Law, Chapter 119, Florida Statutes. You do not indicate who these "friends" of the city may be. In the absence of more information, this office cannot categorically conclude that the Facebook pages of such "friends" would be subject to Chapter 119; rather such a determination would depend on whether the information contained on such pages was made or received in connection of the transaction of official business by or on behalf of a public agency such as the city. In light of the above, the city, should it establish a Facebook page, may wish to post a warning regarding the application and implications of the Public Records Law. [7]

Question Two

Section 119.021(2)(a), Florida Statutes, requires the Division of Library and Information Services (division) of the Department of State to adopt rules establishing retention schedules and a disposal process for public records. Each agency must comply with these rules.[8] The division shall establish a time period for the retention or disposal of each series of records.[9]

Section 257.36(6), Florida Statutes, provides that a "public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the division." This office in Attorney General Opinion 96-34, recognizing that the definition of "public records" is comprehensive and encompasses all such material regardless of its physical form or characteristics, stated that electronic public records such as e-mail messages are subject to the statutory limitations on destruction of public records. More recently, this office stated in Attorney General 08-07 that the public records on a website maintained by a city council member that related to the transaction of city business would appear to be subject to the city's policies and retention schedule regarding city records.

The General Records Schedule GS1-SL for State and Local Government Agencies states that "[a]ll Florida public agencies are eligible to use the GS1-SL, which provides retention periods for the most common administrative records such as routine correspondence and personnel, payroll, financial, and legal records." [10] Thus, to the extent that the information on the city's Facebook page constitutes a public record, the city is under an obligation to follow the public records retention schedules established by law.

Questions relating to the applicability of a retention schedule or retention of a specific record, however, should be referred to the Division of Library and Information Services in the Department of State.

Question Three

Article I, section 23, Florida Constitution, provides:

"Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."

Therefore, while the Florida Constitution recognizes a right of privacy for Florida citizens in Article I, section 23, Florida Constitution, it also states that "[t]his section shall not be construed to limit the public's right of access to public records and meetings as provided by law." The Florida courts have

determined that no federal or state right of privacy prevents access to public records.[11] It is the Legislature that has balanced the private versus public rights by creating the various exemptions from public disclosure.[12] Thus, in Florida, "neither a custodian of records nor a person who is the subject of a record can claim a constitutional right of privacy as a bar to requested inspection of a public record which is in the hands of a government agency." [13]

While Article I, section 23, Florida Constitution, may be implicated in determining what information may be collected by the city, [14] to the extent that information on the city's Facebook page constitutes a public record within the meaning of Chapter 119, Florida Statutes, Article I, section 23, Florida Constitution, is not implicated. As noted *supra*, the city may wish to post a notice on its Facebook page regarding the Public Records Law.

Question Four

Section 286.011, Florida Statutes, the Government in the Sunshine Law, has three basic requirements:

- "(1) meetings of public boards or commissions must be open to the public;
- (2) reasonable notice of such meetings must be given; and
- (3) minutes of the meetings must be taken and promptly recorded."

The law applies to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission.[15] The law extends to the discussions and deliberations as well as the formal action taken by a public board or commission, with no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to section 286.011, Florida Statutes.

While the Sunshine Law generally applies to meetings of "two or more" members of the same board or commission, [16] the Florida Supreme Court has stated that the Sunshine Law is to be construed "so as to frustrate all evasive devices." [17] Thus, the courts and this office have found that there are instances where the physical presence of two or more members is not necessary in order to find the Sunshine Law applicable. Thus, this office has stated that members of a public board may not use computers to conduct a private discussion among themselves about board business. [18]

In Attorney General Opinion 08-07, this office concluded that the use of a website blog or message board to solicit comment from other members of the board or commission by their response on

matters that would come before the board would trigger the requirements of the Sunshine Law. As stated therein:

"While there is no statutory prohibition against a city council member posting comments on a privately maintained electronic bulletin board or blog, . . . members of the board or commission must not engage in an exchange or discussion of matters that foreseeably will come before the board or commission for official action. The use of such an electronic means of posting one's comments and the inherent availability of other participants or contributors to act as liaisons would create an environment that could easily become a forum for members of a board or commission to discuss official issues which should most appropriately be conducted at a public meeting in compliance with the Government in the Sunshine Law. It would be incumbent upon the commission members to avoid any action that could be construed as an attempt to evade the requirements of the law."

Such concerns would appear to be equally applicable to the issue at hand. While there would not appear to be a prohibition against a board or commission member posting comments on the city's Facebook page, [19] members of the board or commission must not engage in an exchange or discussion of matters that foreseeably will come before the board or commission for official action.

Accordingly, communications on the city's Facebook page regarding city business may be subject to Florida's Government in the Sunshine Law, section 286.011, Florida Statutes.

Sincerely,

Bill McCollum
Attorney General

BM/tjw

[1] *State v. City of Sunrise*, 354 So. 2d 1206, 1209 (Fla. 1978).

[2] *Id.* And see Ops. Att'y Gen. Fla. 83-06 (1983) and 72-198(1972) for the proposition that a municipality's home rule power is tempered by the basic proposition that municipal funds may be used only for a municipal purpose. See also Art. VII, s. 10, Fla. Const. (municipality prohibited from lending or using its taxing power or credit to aid private parties).

[3] See, e.g., Ops. Att'y Gen. Fla. 88-52 (1988), 86-87 (1986), 84-76 (1984), and 83-05 (1983) (legislative determination and findings as to the purpose and the benefits accruing to the county

from the program could not be delegated to the Attorney General, nor could the Attorney General undertake to make such legislative findings on behalf of the county).

[4] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

[5] See Op. Att'y Gen. Fla. 08-07 stating that an email created by a public official in connection with the transaction of official business is a public record whether it is created on a publicly or privately owned computer and concluding that the posting of comments relating to city business by a city commissioner on a web page which he maintains would be subject to the Public Records Law.

[6] *State v. City of Clearwater*, 863 So. 2d 149, 154 (Fla. 2003).

[7] Cf. s. 668.6076, Fla. Stat., requiring any agency as defined in s. 119.011, Fla. Stat., or legislative entity that operates a website and uses electronic mail to post the following statement in a conspicuous location on its website:

"Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

[8] Section 119.021(2)(b), Fla. Stat. And see s. 119.021(2)(c), Fla. Stat., providing that public officials must "systematically dispose" of records no longer needed, subject to the consent of the division in accordance with s. 257.36, Fla. Stat.

[9] *Id.*

[10] The general retention schedules, including GS1-SL, are available at:

http://dlis.dos.state.fl.us/recordsmgmt/gen_records_schedules.cfm.

[11] See, e.g., *Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985) (no federal or state right of privacy prevents access to public records); *Forsberg v. Housing Authority of Miami Beach*, 455 So. 2d 373 (Fla. 1984); *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980) (no federal or state disclosural right of privacy prevents a member of the public from seeing public records); *Mills v. Doyle*, 407 So. 2d 348 (Fla. 4th DCA 1981).

[12] *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997). Cf. *Berkeley v. Eisen*, 699 So. 2d 789 (Fla. 4th DCA 1997) (although Art. I, s. 23, Fla. Const., recognizes that the right of privacy

shall not be construed to limit the public's right of access to public records, there is a statutory exemption from Florida's public records disclosure where the Department of Banking and Financing is investigating or has concluded its investigation of a securities customer's complaint).

[13] *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), review denied, 589 So. 2d 289 (Fla. 1991), appeal after remand, 619 So. 2d 983 (Fla. 5th DCA 1993).

[14] *Cf. Thomas v. Smith*, 882 So. 2d 1037 (Fla. 2d DCA 2004), in which the appellant taxpayers had filed a timely application for ad valorem tax exemption, but refused to make the required disclosure of their social security numbers. Their application was denied based on their refusal to make the required disclosure. Appellants argued that the required disclosure of their social security number in order to claim the exemption violated, among others, Art. I, s. 23, Fla. Const. The district court concluded that the lower court erred in concluding that the taxpayers had no legitimate expectation of privacy in their social security numbers; rather the court should first have determined whether the taxpayers had a legitimate expectation of privacy in their social security numbers without regard to other considerations such as the necessity to submit an application in order to obtain the benefit of the homestead tax exemption. The district court therefore remanded the case for further proceedings on this claim.

[15] *See, e.g., Hough v. Stemberge*, 278 So. 2d 288 (Fla. 3d DCA 1973). *And see City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969); and *Wolfson v. State*, 344 So. 2d 611 (Fla. 2d DCA 1977).

[16] *Hough v. Stemberge, supra. And see City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989); *Deerfield Beach Publishing, Inc. v. Robb*, 530 So. 2d 510 (Fla. 4th DCA 1988) (requisite to application of the Sunshine Law is a meeting between two or more public officials); and *Mitchell v. School Board of Leon County*, 335 So. 2d 354 (Fla. 1st DCA 1976).

[17] *See, e.g., Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974); *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979).

[18] *Op. Att'y Gen. Fla. 89-39 (1989). Compare 01-20 (2001)* (a one-way e-mail communication from one city council member to another, when it does not result in the exchange of council members' comments or responses on subjects requiring council action, does not constitute a meeting subject to the Sunshine Law; however, such e-mail communications are public records and must be

maintained by the records custodian for public inspection and copying).

[19] Cf. Op. Att'y Gen. Fla. 07-35 (2007), concluding that members of a commission may exchange documents that they wish other members of the commission to consider on matters coming before the commission for official action, provided there is no response from, or interaction related to such documents among, the commissioners prior to the public meeting. It was noted, however, that if the commissioners intended to exchange individual position papers on the same subject, this office would express the same concerns as discussed in Attorney General Opinion 01-21. In that opinion, this office was asked whether the preparation and distribution of individual position statements on the same subject by several city council members to all other council members would constitute an interaction or exchange by the council that would be subject to the requirements of the Government in the Sunshine Law. This office determined that such a practice would violate the Sunshine Law to the extent that any such communication is a response to another council member's statement.

RESOLUTION 2009-017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF CORAL SPRINGS, FLORIDA, SETTING FORTH LEGISLATIVE FINDINGS THAT UTILIZATION OF A CITY OF CORAL SPRINGS FACEBOOK PAGE SERVES A MUNICIPAL PURPOSE; DEFINING PARAMETERS APPROVED BY THE CITY COMMISSION FOR ESTABLISHMENT AND MAINTENANCE OF THE CITY OF CORAL SPRINGS FACEBOOK PAGE; AUTHORIZING USE OF THE CITY SEAL ON THE FACEBOOK PAGE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on March 18, 2009, on behalf of the Coral Springs City Commission ("City Commission"), the City Attorney submitted a request for a formal opinion from the Florida Attorney General ("Attorney General") involving the implications of the City of Coral Springs ("City") maintaining a page on Facebook (facebook.com);

WHEREAS, on April 23, 2009, the Attorney General issued opinion 09-19 in response to the City's request of March 18, 2009;

WHEREAS, in opinion 09-19, the Attorney General recognized that the City is authorized to exercise powers for a municipal purpose, such that creation of a Facebook page must be for a municipal purpose;

WHEREAS, section 166.021(1), Florida Statutes, as recognized by the Attorney General in 09-19, provides for the power of municipalities as follows:

As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

§ 166.021(1), Fla. Stat. (2008); Fla. Const. Art. VIII, sec. 2(b) (providing "[m]unicipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law . . .");

WHEREAS, as the Attorney General recognized in 09-19, the Florida Supreme Court has held that the Florida Constitution "expressly grants to every municipality in this state authority to

conduct municipal government, perform municipal functions, and render municipal services. The only limitation on that power is that it must be exercised for a valid 'municipal purpose.'" *State v. City of Sunrise*, 354 So. 2d 1206, 1209 (Fla. 1978);

WHEREAS, the Attorney General further opined in 09-19 that "[t]he determination of what constitutes a valid municipal purpose for the expenditure of public funds is one that must be made by the city commission and cannot be delegated to [the Attorney General's Office]. In making this determination, the commission must make appropriate legislative findings. Accordingly, the city would appear to have the authority to establish a Facebook page under its home rule powers provided the establishment of such a page is for a valid municipal purpose and the city commission has made the appropriate legislative findings."¹;

WHEREAS, in addition to recognizing that a Facebook page must serve a municipal purpose, the Attorney General in 09-19 recognized that to the extent content on a City Facebook page would deal with official business of the City, that content would be a public record under Chapter 119, Florida Statutes and subject to the retention schedule established pursuant to the General Records Schedule GS1-SL for State and Local Government Agencies;

WHEREAS, on May 26, 2009 the City Commission held a public workshop ("workshop") to discuss utilization of a Facebook page as a communication alternative. The staff presentation and recommendations from that workshop are attached to this Resolution as Exhibit "A" and are incorporated herein;

WHEREAS, the City Commission finds that Facebook is a valuable tool that would allow the City to communicate about City business at no expense and allow better and more wide-ranging communications with our residents. Consequently, the City Commission finds Facebook to be an efficient method of communication;

¹ The Attorney General previously opined in 2003-29 that "[i]n the absence of any statutory directive, charter provision, ordinance or rule to the contrary, the governing body may in its discretion use whatever method or procedure it deems in the best interest of the municipality to carry out municipal functions." See also *Everett v. City of Tallahassee*, 840 F.Supp. 1528, 1541 (N.D. Fla. 1992) (citing *Boca Raton v. Gidman*, 440 So. 2d 1277 (Fla. 1983)) ("Both Article VIII, Section 2(b) of the Florida Constitution and the Florida's Municipal Home Rule Powers Act, Chapter 166, Florida Statutes permit Florida municipalities to do anything that fulfills a municipal purpose that they are not expressly prohibited from doing by the United States or Florida Constitutions, general or special laws, or a county charter."); *City of Ocala v. O.J. NYE*, 608 So. 2d 15, 17 (Fla. 1992) (citing *City of Sunrise*, 354 So. 2d at 1209) ("[M]unicipalities are not dependent upon the legislature for further authorization, and legislative statutes are relevant only to determine limitations of authority.")

WHEREAS, the City Commission finds that utilization of this low cost alternative would be of great benefit to the City in apprising City residents of upcoming events and allowing residents a forum in which to discuss certain topics relevant to the official business of the City. Moreover, the City Commission finds that this communication alternative will allow the City to reach out to a segment of the community that has not utilized current communication alternatives;

WHEREAS, the City Commission approves the following staff recommendations for establishing parameters for creation and maintenance of a City Facebook Page as detailed more fully in Exhibit "A":

- a. Consistent with the municipal purpose, City staff would establish a "fan" page on Facebook for the City of Coral Springs.
- b. The official City seal would be represented on the City's Facebook page.
- c. Wall posts would be allowed for two weeks on specific hot topics and other appropriate issues.
- d. All posts would remain for a minimum of thirty calendar days after the two week period to comply with public records retention requirements for transitory communications;
- e. To the extent that posted comments would be inappropriate in nature (e.g. vulgar or profane in nature), the City would rely on Facebook to remove such comments from the City's site pursuant to Facebook's policies and procedures prohibiting such inappropriate content.
- f. The page would include a disclaimer regarding posts and fan information being subject to Chapter 119, Florida Statutes.
- g. Initially, the Facebook page would be maintained for a trial period of thirty days. At the end of this thirty-day period, the City Commission could elect to discontinue the Facebook page.

WHEREAS, it is the intent of the City Commission that a Facebook page be utilized to serve the valid municipal purpose of communicating City business through the no-cost internet-based medium of Facebook, subject to the parameters and recommendations as detailed herein and attached as Exhibit A;

WHEREAS, the City Commission finds and determines that implementing Facebook as described herein, and given the foregoing findings and conclusions, will serve to benefit the health, safety and welfare of the citizens of the City of Coral Springs, consistent with Article VIII of the Florida Constitution and the parameters of Chapter 166, Florida Statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF CORAL SPRINGS, FLORIDA:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and hereby made a specific part of this Resolution.

Section 2. The City Commission of the City of Coral Springs, Florida hereby finds that a City Facebook page would serve a valid municipal purpose and authorizes City officials, including the City Manager or his designees, to establish a City Facebook page consistent with the parameters set forth herein and staff recommendations as detailed herein and attached as Exhibit A, and take any necessary actions consistent with the intent of this resolution to maintain and update the Facebook Page.

The City Commission of the City of Coral Springs, Florida hereby grants its express approval for use of the official City seal on the Facebook page consistent with sections 2-321 through 2-326 of the Code of the City of Coral Springs, Florida and section 165.043, Florida Statutes.

Section 3. All resolutions or parts of resolutions in conflict herewith be, and the same are hereby repealed to the extent of such conflict.

Section 4. If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

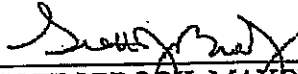
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Section 5. Effective Date.

This Resolution shall become effective upon adoption.

PASSED AND ADOPTED the 2nd day of June, 2009.

ATTEST:


SCOTT J BROOK, MAYOR


PETER M.J. RICHARDSON, CRM, CITY CLERK

Unanimous <input checked="" type="checkbox"/>			Yes	No
Motion/2 nd <input type="checkbox"/>				
<input type="checkbox"/>	<input type="checkbox"/>	Mayor Brook	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	Vice Mayor Boccard	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Commissioner Gold	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Commissioner Bruck	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	Commissioner Powers	<input type="checkbox"/>	<input type="checkbox"/>




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facebook

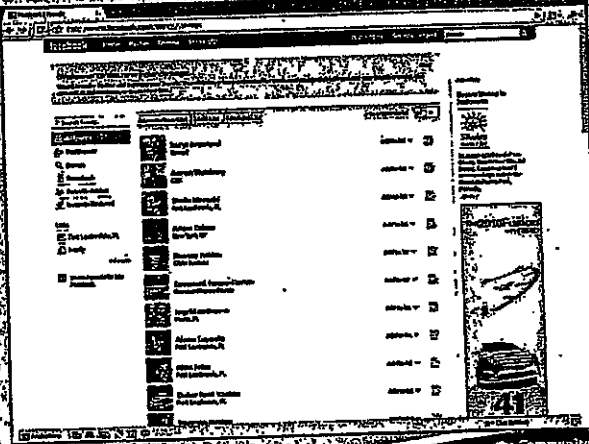
Presented by
Christine Verdi-Sarwar

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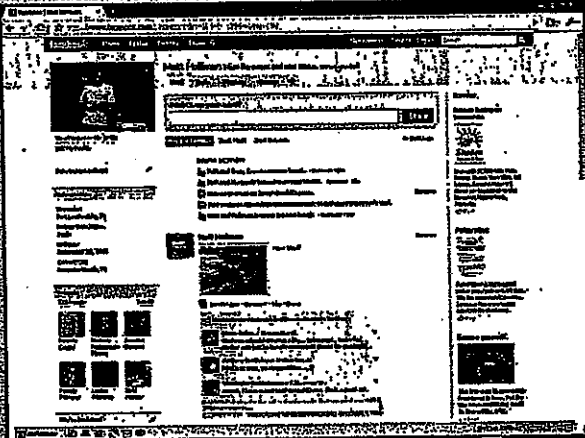


What is Facebook?

Friends List



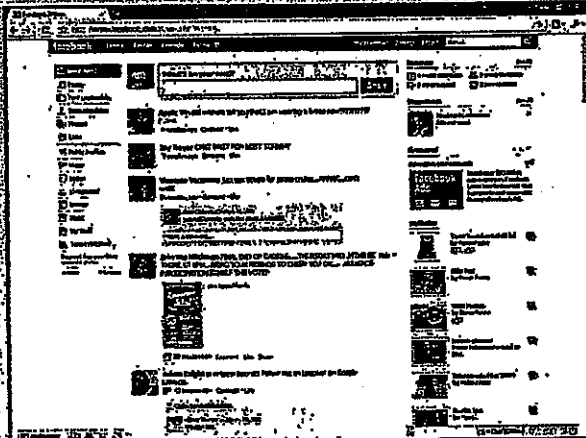
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Personal Wall Feeds

What is Facebook?

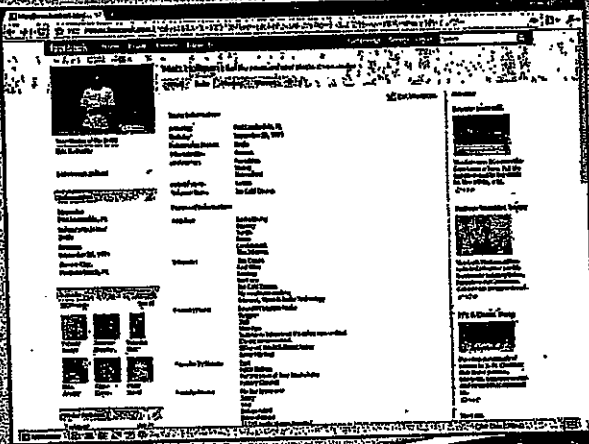
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News Feeds

What is Facebook?

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What is Facebook?

Profile/Info Page

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The image shows a screenshot of a Facebook profile page. The page layout includes a profile picture at the top left, a cover photo, and various sections for profile information, posts, and friends. The text 'Profile/Info Page' is written vertically on the left side of the screenshot. The Coral Springs logo is visible in the bottom right corner of the slide.



Why Is the City Interested in Facebook?

- The City of Coral Springs is the first city in Florida to request an AG opinion
- The AG opinion spoke specifically about using Facebook for a municipal purpose
- Our purpose = better and more wide-ranging communications with our residents

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The slide features a bulleted list of three points explaining the city's interest in Facebook. The text is centered on the slide. The Coral Springs logo is located in the bottom right corner.



Why Is the City Interested in Facebook?

- Facebook will be another tool in our communications toolbox
- Especially targeting younger residents and the growing population of users in 20s-30s-40s
- We can add social media to our current communication channels

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How the City Communicates

- Commission Meetings
- Annual Report
- CityRadio (1670 AM)
- CityTV (Channel 25)
- Coral Springs Quarterly Magazine
- CityWeb (CoralSprings.Org)
- City e-news
- Podcasts
- Video on Demand
- Streaming Video
- Csteens.Com
- Csteens Undecided.Com
- Quarterly Teen News Magazine
- Twitter
- CityText
- Direct Mail and Display Advertising
- "Slice of the Springs"
- Banners, Posters, Fliers and Brochures
- "Code-Red" Phone Alert System
- State of the City Event
- Information Booths
- City Hall in the Mall
- City Hall Reception Area
- On-hold Messages
- Front-Line Employees
- Coming Soon: Facebook

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How Other Cities Are Using Facebook

National Benchmark Cities

- Bellevue, WA: No official site
- Chippewa, OR: No Facebook page
- Fort Collins, CO: No Facebook page
- Overland Park, KS: Official site also page (directed allow wall posts)
- Selem, OR: Page for PD (only closed group)
- Austin, TX: No official site
- Scottsdale, AZ: No official site

Local Benchmark Cities

- Pompano Beach: Doesn't expect to be an official city site (no email, maintained by private staff, allow wall posts)
- Highland: No Facebook page (but considering)
- Miramar: No Facebook page (but considering)
- FL Lauderdale: No Facebook page (used for City Attorney recommendation)
- Cambridge Place: No Facebook page
- Rocky Hill: Police Services Department, just (communications only)

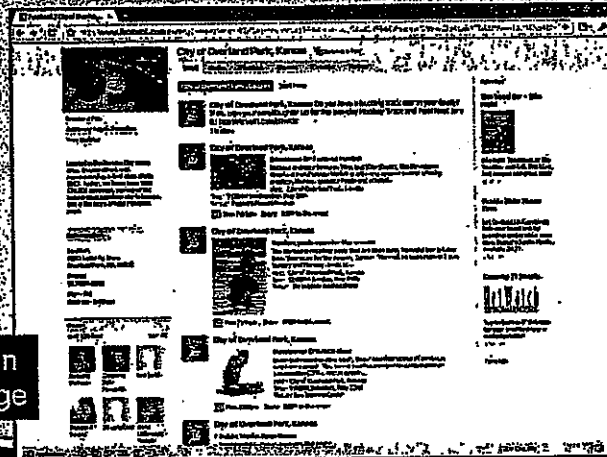
Of the 20 ICMA benchmark cities with populations of 70,000 or greater, only 5 have some form of official page on Facebook

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How Other Cities Are Using Facebook

Overland Park, KS: Fan page, only allows wall posts for weekly city newsletter



Fan Page

How Other Cities Are Using Facebook
 Pompano Beach: Doesn't appear as an official city site (no seal), maintained by non-city staff, allows posts

Group Page

non-city staff

The image shows a screenshot of a Facebook page for Pompano Beach. The page layout includes a cover photo, a profile picture, and a main content area with text and a video player. A callout box labeled 'Group Page' points to the page title. Another callout box labeled 'non-city staff' points to the 'About' section of the page, which lists administrators and other details.

Types of Facebook Pages

- Friend: Personal profile, must be maintained by an individual for individual use
- Fan: The Facebook form of Twitter; allows fans to follow an organization and may/may not allow wall posts
- Group: Multiple administrators can post different content

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The slide features a dark background with a light-colored wavy border at the top and bottom. The text is white and clearly legible. The Coral Springs logo is located in the bottom right corner.



What About Coral Springs?

Issues to consider:

- Privacy rights (records retention)
- No violation of Sunshine Law
- City as conduit for inappropriate connections
 - Very difficult to block friends from seeing other friends; resource-intensive
- Granting of license to use photos, videos, and other content according to the Facebook Statement of Rights and Responsibilities


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How Can We Effectively Use Facebook?

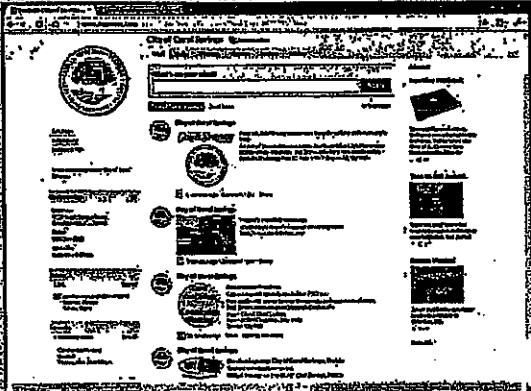
- Back to the AG's opinion: Municipal Purpose
- Establish a fan page
- Use push communications to publicize events, activities, important issues, etc.
 - Our updates appear on all fans' walls
 - If they're signed up for this option, updates and event invites can be sent to fans' e-mail and cell phones
- Drive users to the City's web site(s)

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What A Coral Springs Facebook Page Might Look Like

- Frequent posts/City updates
- Links to our site and other City media (i.e. videos, pdfs, magazine articles, local weather, Tweeter updates, etc.)
- Allow wall posts on specific content



Fan Page

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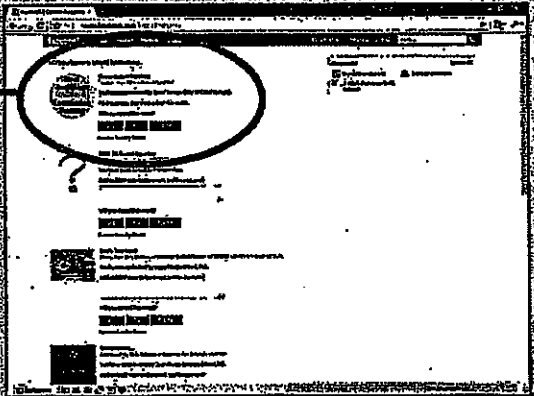
Managing Wall Posts

- Allow wall posts for 2 weeks on specific hot topics and other appropriate issues
- All posts must remain for a minimum of 30 days after the 2 weeks to comply with public records retention requirements (transitory communications)
 - Threatening & off-topic comments will be deleted
- Show full disclaimer re: privacy and records retention on wall
- Utilize volunteers to delete content after 30-day period

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What A Coral Springs Facebook Page Might Look Like

This is how a notification will look when sent to people.



The image shows a screenshot of a Facebook page for Coral Springs. A notification is highlighted with a red circle and a red arrow pointing to it from the text on the left. The notification text includes 'Coral Springs', 'Community of Excellence', and 'Coral Springs'. The Facebook page header and navigation bar are visible at the top. The Coral Springs logo is in the bottom right corner.

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Benefits of This Approach

- Another effective communication channel especially targeted to younger residents
- Ability to publicize events and other City happenings right on our wall
- Ability to send out event e-vites to fans

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