

Foxfire Village Draft Social Media Policy

To: Mayor and Members of the Village Council

From: Councilman Kevin Robbins

Re: Objection to Draft Social Media Policy – Constitutional, Legal, and Governance Concerns

Date: 13 January 2026

INTRODUCTION

I respectfully object to the adoption of the proposed Foxfire Village Draft social media Policy in its current form.

While I support reasonable guidance for transparency, ethics, and compliance with North Carolina law, this draft policy contains multiple provisions that are constitutionally infirm, structurally improper as applied to elected officials, and exposes individual council members to unnecessary personal legal risk while simultaneously shielding the Village from its own statutory obligations.

As drafted, this policy should not be adopted.

1. IMPROPER REGULATION OF ELECTED OFFICIAL SPEECH

The draft policy repeatedly treats elected officials as though they are Village employees, subject to internal managerial control and discipline for personal speech.

Elected officials:

- Are not subordinates of staff, the manager, or legal counsel
- Are independently elected by the voters
- Retain full First Amendment protections for political speech

Several provisions purport to regulate opinions, commentary, and advocacy by council members on matters of public concern. This is inconsistent with well-established constitutional doctrine and invites litigation.

2. VAGUENESS, OVERBREADTH, AND VIEWPOINT DISCRIMINATION

The policy contains vague and subjective standards, including prohibitions on speech that:

- “Reflects poorly” on the Village or its officials
- Creates the “appearance” of a conflict of interest
- Expresses opinions on matters that may come before Council

These standards are undefined and inherently subjective, allowing selective or retaliatory enforcement based on viewpoint. Such provisions have repeatedly been struck down by courts.

3. UNCONSTITUTIONAL RESTRICTIONS ON CORE POLITICAL SPEECH

The policy states that officials “should refrain from expressing an opinion regarding a matter that is or may come before the Village Council.”

This provision is fundamentally incompatible with the role of an elected official.

Council members are elected to form, express, and advocate opinions on pending matters. Restricting such speech constitutes an unconstitutional restraint on core political expression.

4. IMPROPER SHIFTING OF PUBLIC RECORDS LIABILITY

The draft policy states that when an official communicates about Village business on a personal account, the official is solely responsible for record retention and archival, while the Village disclaims any responsibility.

This approach:

- Conflicts with North Carolina public records law and best practices
- Exposes individual officials to personal liability and spoliation claims
- Allows the Village to benefit from records while disclaiming management obligations

If communications are deemed Village public records, the Village—not individual council members—must provide lawful mechanisms for retention and compliance.

5. CENSURE AS A SPEECH ENFORCEMENT TOOL

The policy links violations to potential censure under the Code of Ethics without:

- Clear standards
- Defined due process
- Objective enforcement criteria

Censure cannot be used as a back-door mechanism to punish protected speech or suppress dissent among elected officials.

6. REDUNDANCY AND LACK OF NECESSITY

Many provisions restate obligations already governed by:

- State law (public records, confidentiality, open meetings)
- Existing ethics statutes
- Common law standards

A policy that adds constitutional risk without providing necessary guidance does not serve the Village's interests.

CONCLUSION

For the reasons stated above, I respectfully request that:

1. The Draft Social Media Policy not be adopted as written
2. The policy be substantially revised to:
 - Clearly distinguish elected officials from employees
 - Apply only to official Village-managed accounts

- o Remove unconstitutional speech restrictions
 - o Ensure the Village retains responsibility for its own records
3. Revised language be returned to Council with specific legal authority cited

Until such revisions are made, adoption of this policy would expose both the Village and individual council members to unnecessary legal risk.

Respectfully submitted,

Kevin Robbins

Councilman, Foxfire Village

Foxfire Village Social Media Policy

DRAFT – COUNCILMEMBER ROBBINS REDLINE WITH COMMENTS

This policy is intended for elected officials and appointed boards, commissions and committees using personal or professional social media platforms.

[COMMENT: Overbroad. The Village has limited authority to regulate the personal speech of elected officials. Any policy must be narrowly tailored and advisory in nature for elected officials.]

REPLACEMENT:

This policy is intended to provide guidance for appointed boards, commissions, and committees, and general best-practice guidance for elected officials, regarding the use of social media in connection with Village business.

Social media under this policy covers all means of communicating or posting information or content of any sort on the internet, including all social networking of affiliated web sites (e.g. Facebook, X, Instagram, etc.), chat rooms, blogs, personal web sites, and web bulletin boards, as well as all other forms of electronic communications.

[COMMENT: Definition is overly expansive and could be read to include private communications, chilling protected speech.]

REPLACEMENT:

For purposes of this policy, “social media” refers to publicly accessible online platforms used to share content with a broad audience.

While elected officials and Village Council-appointed board, committee, and commission members may maintain and use personal web pages and websites, blogs and other social medial sites, their status as elected or appointed officials requires that the content of any postings on those sites not be in violation of existing Village by-laws, code of ethics, policies, directives, rules, or regulations.

[COMMENT: Elected officials are not employees and are not subject to all internal policies in their personal speech. This sentence creates an unconstitutional condition.]

REPLACEMENT:

Appointed board, committee, and commission members remain subject to applicable Village bylaws, ethics provisions, and policies while performing official duties. Elected officials are governed by state law, the Village Code of Ethics, and the North Carolina Constitution.

Elected and appointed officials are autonomous actors with the right and responsibility to communicate with the public. Once a citizen becomes a public or appointed official, however, that official's expectations of privacy and private speech can become unclear since he or she is also a public person with public exposure and responsibilities to the community, Foxfire Village, and to the Village Council.

[COMMENT: This language is legally inaccurate and implies forfeiture of private speech rights.]

REPLACEMENT:

Elected and appointed officials are autonomous actors with the right and responsibility to communicate with the public. Elected officials retain their full First Amendment rights when speaking in their personal capacity.

Foxfire Village acknowledges its officials have the First Amendment right to free speech, however, that right is not absolute when involving matters of official Village business, issues, or concerns.

[COMMENT: This misstates constitutional law as applied to elected officials.]

REPLACEMENT:

Foxfire Village acknowledges that elected officials retain First Amendment rights. Nothing in this policy is intended to restrict lawful protected speech.

Elected and appointed officials need to be accurate, appropriate, and timely in their online posts and to make proper disclaimers that they are speaking only for themselves as private citizens.

[COMMENT: “Need to” implies mandatory enforcement against elected officials.]

REPLACEMENT:

Elected and appointed officials are encouraged to be accurate and professional in online communications and to use disclaimers when appropriate.

Nothing in this policy is intended to limit the First Amendment right of free speech of any person.

[COMMENT: Retained, but contradicted elsewhere — must be reconciled.]

Requirements for Social Media Use

1.

Officials shall make it clear when using personal or professional social media accounts that they are speaking on behalf of themselves and not on behalf of Foxfire Village.

[COMMENT: "Shall" is mandatory and unenforceable against elected officials.]

REPLACEMENT:

Officials should make it clear when using personal or professional social media accounts that they are speaking on behalf of themselves and not on behalf of Foxfire Village.

When publishing content related to the Village or Village business on a personal website or social media sites, a disclaimer should be added stating "The postings on this site are my own and don't necessarily represent Foxfire Village's positions or opinions."

[COMMENT: Acceptable as guidance.]

2.

All elected and appointed officials are required to conduct themselves in a manner consistent with the Village's policies and code of ethics. A violation of this policy may subject the elected or appointed official to censure pursuant to the Foxfire Village Code of Ethics censure procedures.

[COMMENT: Council cannot create a social media policy as an independent basis for censure of elected officials.]

REPLACEMENT:

Appointed officials are subject to applicable Village policies and ethics provisions. Elected officials remain subject to censure only as authorized by state law and the Village Code of Ethics.

3.

Elected and appointed officials should never represent themselves as a spokesperson for the Village Council, a Village board or committee, the Village Administration, or any Village Department on personal social media accounts.

[COMMENT: “Never” is absolute and incorrect — council members may speak in official roles when authorized.]

REPLACEMENT:

Officials should not represent themselves as an official spokesperson unless authorized by the Village Council or applicable body.

4.

If an elected or appointed official conducts Village business or communication as an official from a personal or professional account, officials should assume that Village related communications will be considered a public record subject to North Carolina Public Records Law...

[COMMENT: Accurate concept, but responsibility language is too broad.]

REPLACEMENT:

If an official conducts Village business using a personal or professional account, such communications may be subject to the North Carolina Public Records Law.

The Village does not archive or manage personal social media accounts thus; the official is solely responsible for the retention and archival of content published on personal and professional social media accounts.

[COMMENT: Shifts statutory compliance risk entirely to individuals.]

REPLACEMENT:

The Village does not manage personal accounts; officials should consult the Clerk regarding records retention obligations.

5.

If an elected or appointed official conducts any Village business... the official shall not delete any comments, block users, or otherwise restrict access to the public based on the viewpoints expressed.

[COMMENT: This imposes First Amendment forum rules on purely personal accounts — legally risky.]

REPLACEMENT:

If an official designates an account as an official Village communication channel, constitutional public forum principles may apply.

6.

Officials may not reveal any confidential or privileged information...

[COMMENT: Retained — legally sound.]

7.

Officials are expressly prohibited from using personal or professional social media to engage in any activity or conduct that violates federal, state, or local law.

[COMMENT: Redundant but acceptable.]

8.

Officials are prohibited from deleting posts and related comments regarding any Village related matters...

[COMMENT: Overbroad and duplicative of #5.]

REPLACEMENT:

Officials should be mindful that deletion of official communications may implicate public records obligations.

9.

Officials need to be mindful that posting content regarding Village matters could result in the violation of the Open Meetings Law...

[COMMENT: Accurate guidance.]

10.

Officials are prohibited from using social media to engage in any activity that constitutes or creates the appearance of a conflict of interest.

[COMMENT: "Appearance" standard is vague but acceptable as guidance.]

11.

Officials should refrain from expressing an opinion regarding a matter that is or may come before the Village Council or committee of which you are a member.

[COMMENT: This is a serious First Amendment violation for elected officials.]

REPLACEMENT:

Officials should be mindful of ethical obligations when discussing matters pending before their board or council.

12.

Officials should avoid posts that express favoritism or bias... or reflect poorly on a public official, board member, committee member, the Village, its employees, or its residents.

[COMMENT: Vague, subjective, and chilling to protected speech.]

REPLACEMENT:

Officials are encouraged to communicate respectfully and professionally.

OVERALL COMMENT FOR THE RECORD

This policy, as originally drafted, improperly conflates employee conduct rules with the constitutional role of elected officials, creates enforceable mandates where only guidance is legally permissible, and exposes the Village to First Amendment and due-process challenges. Substantial narrowing is required.

Foxfire Village

Social Media Guidance Statement

(Robbins Substitute)

Purpose

This statement provides general, nonbinding guidance regarding the use of social media by elected officials and appointed boards when discussing matters related to Foxfire Village.

Nothing in this statement is intended to regulate or restrict the lawful personal speech of any individual.

Scope

This guidance applies only to public-facing online communications that reference Village-related matters.

It does not apply to private communications, political speech, campaign activity, or personal expression.

General Guidance

1. Officials may choose to clarify when they are speaking in a personal capacity and not on behalf of the Village.
 2. Officials should avoid presenting themselves as an authorized spokesperson unless expressly designated.
 3. Officials are encouraged to communicate respectfully and professionally when discussing Village-related topics.
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Legal Awareness

1. Communications that constitute official Village business may be subject to the North Carolina Public Records Law.
 2. Online discussions involving multiple members of the same public body may implicate the Open Meetings Law if a quorum participates.
 3. Confidential or privileged information protected by law should not be disclosed.
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Nature of This Statement

This statement is advisory only and does not create rules, penalties, or enforcement mechanisms.

END