



Legislation Text

File #: 59191, **Version:** 1

Fiscal Note

The proposed resolution authorizes Information Technology staff to accept legal terms of social media platforms. Any City agency purchasing additional services available from the social media company will be funded by that agency's own 2020 Adopted Operating Budget. No additional City appropriation is required.

Title

Authorizing staff designated by the Information Technology Director to click on legal terms and conditions for social media accounts and services available for purchase from social media providers, such as Facebook Ads, and authorizing indemnification of the social media provider by the City.

Body

A RESOLUTION Authorizing staff designated by the Information Technology Director to click on legal terms and conditions for social media accounts and services available for purchase from social media providers, such as Facebook Ads, and authorizing indemnification of the social media provider by the City.

WHEREAS, The City as a whole and individual departments benefit from the use of various social media accounts to share information with the public about a wide variety of important city topics; and

WHEREAS, in order to establish and maintain such social media accounts, City staff would be required to click to agree with certain legal terms, privacy policies and other contractual materials, and City employees do not have authority to bind the City to any contract absent specific authority from the Common Council; and

WHEREAS, such legal terms often include clauses requiring the City, as customer, to indemnify, defend and hold harmless the legal entity that operates the social media platform against various claims, losses and expenses, and such clauses are non-negotiable; and

WHEREAS, while indemnification clauses increase the City's exposure to risk, the City may have coverage for such indemnification under its current insurance policies, subject to the policies' terms and conditions, the actual wording of the clause in question, and the particular claim or suit for which a vendor seeks indemnification; and

WHEREAS, APM 1-1 requires permission from the Common Council before the City may agree to indemnify another party; and

WHEREAS, by City ordinance and policy, certain contract requirements apply to all purchases, or purchases that exceed various dollar thresholds, and the City has no mechanism to bind a contractor to these requirements when clicking on non-negotiable online legal terms; and

WHEREAS, Facebook Inc., which owns Facebook and Instagram, has agreed to the City's mandatory nondiscrimination clause for contractors, which is mandatory for every City contract and reads as follows:

MGO 39.02(9)(b): During the term of this contract, the Contractor agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, sexual

orientation, gender identity or national origin.

WHEREAS, certain social media platforms including Facebook include options for paid services such as boosting and advertisements which, if the above-described barriers to contracting were removed, would increase outreach;

NOW, THEREFORE, BE IT RESOLVED staff persons designated by the Information Technology Director, using procedures established by the Information Technology Director, are authorized to click on and accept the legal terms of social media platforms including Facebook, Inc., Twitter, Instagram, YouTube, and other social media services in order to:

1. Establish social media accounts for the City as a whole or individual City departments, divisions or agencies; and
2. Purchase additional services available from the social media company such as boosting or ads; and

With the following restrictions:

1. If the provider agrees to the City's mandatory nondiscrimination clause,
2. if the purchase is not funded by federal grant dollars,
3. if the purchase does not result in a one-time purchase of \$25,000 or more, which would trigger the Ban the Box requirements under MGO 39.08, and
4. the purchase does not result in spending \$50,000 or more with the same company in the calendar year, which would trigger the Affirmative Action requirements under MGO 39.02;

BE IT FURTHER RESOLVED the Common Council authorizes indemnification of such social media companies if necessary under non-negotiable online legal terms, only after having unsuccessfully attempted to negotiate the terms and only upon receiving the City Attorney and Risk Manager's approval to click through the terms and conditions in question.