



Compliance Toolkit for Productive Online Citizen Participation

How government can make online citizen participation work productively within a legal framework.

The digital revolution has ushered in powerful new opportunities for government to engage and involve citizens in the democratic process. Twitter, Facebook, and blogs are proving to be great social engines to inform citizens; however, when conversations are directed at the business of government, policies need to be in place. This helps ensure deliberations and decisions are carried out in a fair and equitable manner consistent with local, state, and federal regulations.

This toolkit presents best practices to help government agencies use eComment to facilitate productive online citizen participation within a legal framework.

Best
Practice

Challenge:

Using web 2.0 tools to interact with citizens raises several legal questions and concerns regarding compliance. If not facilitated with the right tools, policies, and procedures, governments risk violating several regulations including: freedom of information laws, open records laws, open meeting laws, ethics laws, privacy laws, civil rights, and even first amendment rights. Although the popularity of social media is rapidly increasing, recent surveys suggest that government agencies are still measuring the potential risks: two-thirds of states agencies lack policies addressing social media, almost 80% of surveyed counties indicated that they had no social media policies in place, and only 10% of surveyed cities reported using social media to engage citizens in public meetings.¹



“ eComment gives you a social-media like environment where citizens can post what they are feeling except you don't have to monitor it. This way, we can collect and retain comments as part of our current laws and policies without extra complexity or risk. ”

Wendy Klock-Johnson, Citywide Records Manager, Sacramento, CA

Solution:

This toolkit will help you start engaging in productive online citizen participation safely within a legal framework. It covers real-world best practices from government agencies doing this successfully. The examples demonstrate how to build a compliance framework for Granicus eComment. It's trusted to facilitate the most productive form of online citizen participation with the least amount of risk. You can achieve this by following these three essential steps:

Step 1

Publish a “use policy” before taking comments online

Step 2

Control online comments through an ethical and legal framework

Step 3

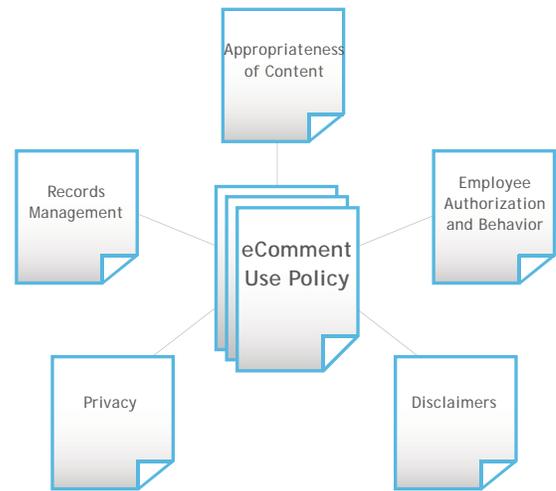
Retain and manage online comments within your public record

Step 1 Publish a “use policy” before taking comments online

To minimize risk, agencies need to implement a policy that clearly communicates the purpose, procedure, and rules for facilitating online citizen participation. It’s best practice for government agencies to publish a use policy that adheres to their policies and local, state, and federal laws.

BEST PRACTICE TOOLKIT

Your use policy for online citizen participation needs to legally support your agency’s business goals and procedures. Because the legal pitfalls of social media are still being measured in government, agencies are increasingly choosing eComment. It offers a safe, simplified, and more productive alternative for facilitating online citizen participation by integrating directly with governments’ current policies and procedures for public meetings, public testimony, and agenda management. The following are five essential elements that need to be covered in your use policy for eComment to keep you in compliance:



1. Appropriateness of Content

Define an appropriate content use clause in your policy to regulate what’s acceptable and what’s not when citizens are submitting comments online through eComment.

If you don’t already have policy in place to regulate content, here are a couple good standards you can follow:

- **City of Arcata, CA** - Arcata uses their “Access Humboldt Programming Policies” to govern appropriate content. The following types of content are prohibited: obscenity, pornography, encouragement of unlawful behavior, slanderous and libelous content, copyright violation, gambling, and commercial content.² Any comments that are deemed to be inappropriate are reviewed by the City Attorney before being removed from the public record.
- **Orange County, CA** - Orange County’s guidelines state: “inappropriate posts are subject to removal, including but not limited to the following types of postings regardless of format (text, video, images, links, documents, etc.): comments not topically related, profane language, content that promotes, fosters or perpetuates discrimination, solicitations of commerce, sexual content, any content that would compromise the safety or security of public or private systems.”³

2. Privacy

With eComment, you may or may not require the public to submit their personal information. Either way, you should outline a “Personal Information and Choice” clause to set clear privacy expectations with your citizens.

Sample privacy language you can include in your eComment policy:

- **City of Seattle, WA** - “If personal information is requested on the web site or volunteered by the user, state law and the federal Privacy Act of 1974 may protect it. However, this information is treated like any other information provided to the city, and may be subject to public inspection and copying if not protected by federal or state law.”⁴

“Open government laws permit the public to participate in the democratic process without having to disclose their name regardless whether they participate by letter, phone, email, or in a meeting.”

Jan Kraepelien, Communications Specialist
City of Arcata, CA

Step 1 Continued...

3. Records Management

Agencies need to ensure comments are retained, maintained, and open for inspection just like any other “writing” or “communication” being regulated under statewide public records laws.⁵ eComment helps keep you in compliance by receiving commentary from the public just like verbal testimony given at a public meeting.

Here is sample policy language you can follow for compliance with eComment, citing your own applicable local and state open records policies:

- *City of Arcata, CA - “Like verbal testimony, public public eComments are limited to a set number of characters in the text box, much as in-person testimony is limited to three minute; directed to the Council-body, as all five Council Members receive the same information in the Public eComment report; and considered to be testimony and become part of the public record subject to the Ralph M. Brown Act and Public Records Act disclosure.” They also state: “copies are available to the public as per SB 343 amending California Government Code Section 54957.5.”⁶*

4. Disclaimers

Publishing disclaimers reinforces your policies and sets clear expectations on what’s lawful and acceptable behavior for online comments.

With eComment, there are two key disclaimers to reference:

- **Right to Remove Comments** - With eComment, agency’s need to be able to regulate inappropriate comments. Clearly state that your agency “reserves the right to restrict or remove any content that is deemed in violation of this policy or any applicable law.”⁷
- **Protect Online Privacy** - It’s imperative that you tell the public that their comments are “subject to public disclosure.” Also, if citizens have a choice whether or not to submit their personal information, be sure to inform them by stating, “if you do not wish to have your personal information be part of the public record, leave it blank.”⁸

5. Employee Authorization and Behavior

Employees should be authorized to use your technology to prevent unlawful conduct. With eComment, this policy is less critical than with social media policies because comments are collected using the same staff, rules, and processes already established to run public meetings, hear public testimony, and manage the public record. Simply refer to these policies to guarantee compliance with eComment.

Here is some sample language you can use:

- **User Authorization** - *Only departments and staff which are responsible for facilitating public discourse at meetings and creating, managing, and retaining the public agenda in accordance with local, state, and federal laws, are authorized to use eComment. Refer to Orange County’s policy for more user authorization and behavior language.⁹*
- **User Behavior** - *Workforce members authorized to use eComment shall adhere to applicable local, state, and federal laws including, but not limited to, employment laws, open meeting laws, records retention, ethics laws, and privacy laws. Communicating consequences is also important. For example, the City of Hampton stipulates, “employees found in violation of this policy may be subject to disciplinary action, up to and including termination of employment.”¹⁰*

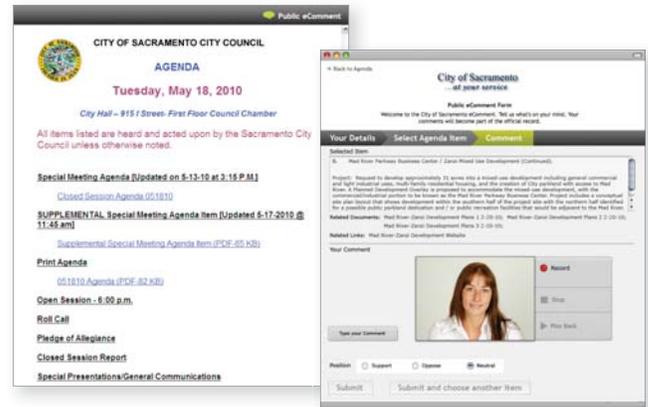
// eComment functions just like verbal testimony. It provides the public with a more convenient way to participate in meetings while giving us a more efficient way to track and retain comments as part of the public record. //

Deborah Musick
Executive Assistant to City Manager
City of Arcata, CA

Step 2 Control online comments through an ethical and legal framework

Now that you've established a policy, consider *how* you're going to engage in a productive dialogue with citizens over the web while staying in compliance. Agencies encounter several legal and ethical risks when engaging in dialogue with citizens' about official business over social forums—conversations are complex and multidimensional across many participants and topics. Agencies need a structured way to lawfully collect and regulate comments on specific subject matter without compromising essential rights to privacy and free speech.

With eComment, the risk and complexity of engaging in public dialogue online is drastically reduced. eComment seamlessly integrates with the laws and policies you already have in place for running your public meetings, hearing public testimony, and managing the public record. Here are the ways agencies use their eComment form to collect and process online comments while staying in compliance local, state, and federal regulations:



1. Limit public comments to meeting agenda items. Minimize risk by limiting online citizen feedback to current meeting agenda items. Just like verbal public testimony, this ensures comments can be regulated and retained in the public record. Also, it's a more productive way to gather timely and actionable feedback for government officials. As a rule, Arcata loads their meeting agenda into eComment and only selects items on which council can deliberate and vote to be available for public comment. However, the system is configurable to collect comments on topics not currently on the agenda. Sacramento does this by adding an agenda item called "Public Comment - Matters Not on the Agenda."

2. Establish a public comment period. Institutionalizing a "public comment period" assures citizens have the opportunity to participate equally in the democratic process. eComment enables agencies to standardize a period of time for accepting public comments on agenda items through the web. Arcata's policy states that the meeting agenda and eComment are to be posted by noon on Friday the week before the meeting. They leave the commenting period open until 9:00 AM the day of the meeting. As soon as the comment period closes, comments are sent to the Council and made available to public at the same time in accordance with their records policy.

With eComment, everything is aimed at the meeting in a fair and ethical way. Comments have fair treatment, just as if they were discovery in a court case. This ensures we're meeting fair and open meeting laws.

Jan Kraepelien
Communications Specialist
City of Arcata, CA

When the eComment period is open, citizens simply click on the form, select the agenda item they wish to comment on, indicate a position, and submit their comment directly to decision-makers.

Wendy Klock-Johnson
Citywide Records Manager
City of Sacramento, CA

Step 2 Continued...

- 3. Limit the length of comments allowed.** Public meetings typically follow a specific timeframe for hearing public comments to ensure feedback is considered fairly. Government agencies find that setting their eComment form to accept comments within a 500-1,000 character limit and 3 minute video comment limit is an acceptable period of time that's consistent with their policies. However, these lengths are configurable within the system.
- 4. Post a disclaimer that comments will be treated like a public record.** Citizens need to know that their comments will be included in the public record and subject to disclosure under open records laws. Both Sacramento and Arcata simply insert a disclaimer directly into their eComment form. Your disclaimer should follow the records management and appropriateness of content policies outlined in Steps 1.1 and 1.3.



Public eComment Form

YOUR eCOMMENTS WILL BE INCLUDED IN THE PUBLIC RECORD FOR SELECTED AGENDA ITEMS. (As per California Government Code Section 54957.5)

CLOSING TIME: for comments on this agenda is 9:00 a.m. the day of the meeting.

Your Details Select Agenda Item Comment

- 5. Meet privacy requirements.** eComment form fields are configurable to work within your privacy policy outlined in Step 1.2. The most popular fields used by government agencies are: First Name, Last Name, Email, District, City, State, and Zip. All fields may be set to optional to uphold a person's right to participate in the democratic process without having to disclose their identity. Even if no personal identification is submitted, the system authenticates that it's a human visitor and prevents spam submissions.

- 6. Avoid the burden and risk of monitoring real-time "blog" conversations.** It is complex and challenging for agencies to try to regulate the appropriateness of public dialogue occurring on social media sites. It raises free speech regulation issues, requires round-the-clock monitoring, and can overstep other ethical and legal obligations. eComment eliminates this risk and burden by pushing comments into the public meeting and record rather than a public-facing "blog" or "chat room." This way, comments are considered equally by decision-makers just like discovery in a court case and the process actually saves staff time.
- 7. Redacting inappropriate information from public records.** eComment allows comments to be legally redacted from the public record through an editing and deletion process. It's important that you use this tool based on your "Appropriateness of Content" guidelines outlined in Step 1.1.
- 8. ADA compliance.** Government records and online technology need to meet the federal accessibility standards outlined in Section 508 of the Americans with Disabilities Act.¹¹ With Granicus, the eComment form and meeting records are accessible across any Internet browser and they may be accessed on smart phones, screen readers, and other assisted devices.

“ In a blog citizens are talking to each other about issues and not directing their testimony to the City Council for the administrative public record. Comments and correspondence received on agenda items need to be regulated just like business being carried out in a public meeting. ”

Deborah Musick
Executive Assistant to City Manager
City of Arcata, CA

Step 3 Retain and manage online comments within your public record

After you have determined how to legally collect comments online, you must address the question of retention. Comments that relate to government business need to be retained and managed under freedom of information and open record laws and procedures. The process for archiving, storing, and making these conversations easily retrievable with social media is still under debate. Agencies need a simple and reliable way to achieve this while staying in compliance.

eComment not only collects comments in a legal way, it also offers a simplified workflow to retain comments appropriately within the public record. Rather than follow a complex and manual process to filter and store applicable conversations in the public record, eComment does this automatically. It generates an in-depth graphical report of comments and follows a streamlined workflow to securely store this report into the repository system of your choice—an online records repository included with eComment, internally in your own records systems, or printed on-file. Here's how agencies are retaining their eComments:



1. Store a hard copy report on-file.

After Arcata's eComment period closes, staff exports their eComment report and makes it available to council and the public just like any other "writings" received on agenda items. The eComment report is posted in three locations and may be subject to public records requests:

- 1) Public Viewing folder managed by the Clerk's Office
- 2) Final Agenda Packet located at City Hall
- 3) Public Library.

2. Archive and publish within your agenda packet online.

Sacramento Clerk staff runs a preliminary eComment report at noon on meeting day and sends it to staff and the elected body.¹² A final report is run at 5:00 PM when the eComment period closes and is taken to the meeting for consideration. Post-meeting, it's added to their finalized agenda packet under an item called "Correspondence and eComments Received." The packet is then published and stored in their online records repository. This entire process is automated with eComment.¹³

3. Archive and publish within your meeting minutes online.

Similar to storing the eComment report within your agenda packet online, comments can also be added directly into your minutes records. This is achieved by using eComment with the Granicus Meeting Efficiency Suite. This combination automates the entire process of minutes creation, online comments, publishing, and retention in your online records repository.¹⁴

// eComment helps us collect and manage citizen input as part of the legislative process and in compliance with California's Public Records Act and the Brown Act, the state's open meeting statute. //

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