



CITY COUNCIL AGENDA ITEM NO. H.3
10/10/2023

SUBJECT: Review of City Council and Commission process for public comments and the use of virtual platforms for public comments; and consider a resolution amending the City Council Meeting Rules and Procedures Policy

DEPARTMENT: City Manager's Office

STAFF: Darin Gale, Assistant City Manager
Tim Ogden, City Manager

TITLE/RECOMMENDATION

Provide direction to staff regarding the process for public comments made at City Council and Commission meetings and the use of virtual platforms for public comments; and adopt a resolution amending the City Council Meeting Rules and Procedures Policy pertaining to Section 3.2 Duties of the Mayor and Section 5.2, Decorum Generally - Public.

FISCAL IMPACT

There is no fiscal impact associated with this action at this time.

BACKGROUND

During an increasing number of City Council meetings throughout the State, and at the September 26, 2023, Brentwood City Council meeting, those in attendance were subjected to vile, racist, and offensive comments from anonymous public participants virtually through what is described as a "zoom attack" or "zoom bomb." The City of Brentwood unequivocally condemns these attacks and stands united in speaking out against any form of hate. Such hateful speech has no place in our community and the City is committed to fostering a safe, inclusive, and respectful environment.

Brentwood is a diverse and supportive community for all living and working here. Our community will not stand idly by, tolerating any form of discrimination based on race, religion, faith, sexual orientation, gender identity, political affiliation, immigration status, or any other group.



CITY COUNCIL AGENDA ITEM NO. H.3 10/10/2023

It is important to note that the First Amendment to the U.S. Constitution protects most forms of speech or expression in a public forum such as City Council meeting. The United States Supreme Court has found that “speech on public issues occupies the “highest rung of the hierarchy of First Amendment values” and is entitled to special protection.” (*Snyder v. Phelps* (2011) 562 U.S. 443, 452.) According to the Court:

Speech deals with matters of public concern when it can “be fairly considered as relating to any matter of political, social, or other concern to the community,” [citation omitted] or when it “is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.” [Citations omitted.] The arguably “inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern.”

In addition, the Brown Act (the State’s open meeting law) specifically protects speakers at public meetings who wish to criticize the body’s policies, procedures, programs, or services of the agency, or the acts or omissions of the legislative body. (Government Code § 54954.3(c).) Finally, the Brown Act does not define ‘hate speech.’

Working within this legal framework, cities are left with a limited array of tools to combat hate speech. Cities can encourage speakers to engage in constructive, rather than abusive, dialogue. Councils can also model good behavior by remaining civil and constructive, even when there are disagreements. What the Council cannot do is entirely stop or stifle constitutionally protected speech it disagrees with, even if that speech is inconsistent with the Council’s norms for civil discourse.

At the September 26, 2023 Council meeting, hate speech occurred virtually during the public comment period for a particular item on the agenda. Since the comments from the public were not related to the agenda item being discussed, staff was able to mute the speakers. However, if the same virtual participant were to speak during public comments for items *not* on the agenda, staff would be unable to mute the virtual participant without exposing the City to serious legal peril.

Currently, the City Council allows public comment to occur both in person and virtually through Zoom. The vast majority of these recent verbal attacks across the state and country have occurred virtually, not in person. The City is not required to offer public participation via Zoom or any other virtual platform when public meetings are taking place in person. Virtual participation was instituted during the early days



CITY COUNCIL AGENDA ITEM NO. H.3
10/10/2023

of the pandemic, when it was judged unsafe to meet in person and the public needed a way to participate; it has been carried over as a courtesy as public meetings have resumed and the pandemic has waned.

Public Participation Options

Below is a list of public participation options for the City Council to consider in this current climate.

| | Time Limit | Public Comments | Additional Measures | Impact |
|----------|-----------------------------------|---|--|--|
| A | 5 minutes or less | In person & virtual | | - No Change |
| B | Limit time to less than 5 minutes | In person & virtual | 1. Read prepared statement regarding hate speech 2. Move public comments for items not on the agenda to end of meeting 3. Limit public comment at beginning of meeting to 30 minutes for items not on the agenda, remaining speakers moved to the end. 4. Request participants have a verified Zoom account | - Does not eliminate the risk of virtual hate speech - Speakers will need to be more succinct - Speakers have to remain in the meeting until late into the evening for items not on the agenda - Verified Zoom accounts would not eliminate the risk of hate speech |
| C | 5 minutes or less | In person only | | - Protects City from virtual hate speech - Speakers unable to provide comments virtually |
| D | 5 minutes or less | In person & suspend virtual comments for a specified time | | - Protects City from virtual hate speech - Speakers unable to provide comments virtually for the specified time |

Option A keeps the status quo, and will not stop or restrict a virtual participant from sharing hate speech.



CITY COUNCIL AGENDA ITEM NO. H.3 10/10/2023

Option B, without any additional measures, will not stop or restrict a virtual participant from sharing hate speech. The purpose of this option is to try to mitigate the impact of hate speech on residents and others participating in a council meeting. A variety of mitigation measure can be instituted, but it will not eliminate the risk.

Options C and D are the only two options that would protect the City from hate speech shared over Zoom during a Council meeting. The City Council is not required by law to allow virtual comment, and the current process was established as a courtesy to allow other options for public participation during COVID.

Although options C and D would mitigate virtual hate speech, a participant could still attend in person to express their views and opinions. Just in the last month, the cities of Walnut Creek, Concord, Sacramento, Ceres, Modesto, Livermore, Redwood City, Santa Rosa and County of Santa Rosa all eliminated virtual comments due to its abuse and many more jurisdictions are considering similar measures. All of the options, including C and D, would not restrict a resident or any other individual from providing written comment to the City Council if they were unable or did not want to attend in person. Residents would still be able to view the meeting on Zoom, YouTube, and the City's website.

Any change to the current public comment process will affect those seeking to participate in Brentwood's public meetings, but this agenda item allows the City Council to discuss and consider changes. Regrettably, once a community is targeted by these vile attacks, it has not been a one-time occurrence. Based upon events in other jurisdictions, staff suspects it will occur again in the future.

Meeting Rules and Procedures Policy

Following the City Council's September 26, 2023, meeting, staff reviewed the City Council's Meeting Rules and Procedures Policy (110-1) and determined that two clarifying revisions would assist in responding to future Zoom attacks. The first proposed revision pertains to the Duties of the Mayor in Section 3.2 (a), and clarifies that the agenda order may be changed pursuant to Section 4.3 (i.e. by the Mayor, Vice-Mayor (in the Mayor's absence), City Manager, or a majority vote of the City Council).

The second proposed revision (to Section 5.2, Decorum Generally – Public) pertains to public speaking times, and allows the Mayor to reduce public speaking times for reasons other than an anticipated large number of speakers. This revision is content neutral, and is not dependent on a particular type of speech. A copy of the Meeting Rules and Procedures Policy is attached.



**CITY COUNCIL AGENDA ITEM NO. H.3
10/10/2023**

Any changes recommended or adopted would be implemented the following day going forward for City commissions, committees, and future Council meetings.

CITY COUNCIL STRATEGIC INITIATIVE

Not Applicable.

PREVIOUS ACTION

No previous action taken

ENVIRONMENTAL DETERMINATION

Not Applicable.

ATTACHMENT(S)

1. Resolution
2. *Synder v. Phelps*
3. Government Code § 54954.3
4. City Council Meeting Rules and Procedures Policy (110-1)