

SUBJECT: Review of City Council and Commission process for public comments to reduce hate speech and the use of virtual platforms for public comments; and consider drafting a statement of values

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 direct to staff to work with the Diversity, Equity, Belonging and Inclusion Committee to draft a City Council statement of values.

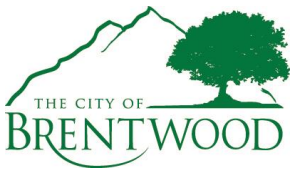
FISCAL IMPACT

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

BACKGROUND

On October 1, 2023, the City Council updated the City Council Meeting Rules and Procedures Policy and provided direction to staff to allow for continued virtual public comments for agenized items only. Public comments on items not on the agenda would be take in person only, to protect the City from what is described by many as being "Zoom bombed" with hate speech. Based upon the current process, the City was protected from being Zoom bombed with hate speech on three separate occasions.

At the March 12, 2024, City Council meeting, a future agenda item was approved to spend staff time and resources to determine what additional steps could be taken to limit hate speech during City Council meetings, allow for virtual public comments and create a City value or mission statement. Staff reviewed a number of steps that have been taken around the region and throughout the state to limit hate speech during public comments. In reviewing other city processes referenced by the City Council, staff was unable to find a staff report or council meeting where legal counsel



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supported a process that recommended restricting a person from exercising their First Amendment rights.

It is important to note that the First Amendment to the U.S. Constitution protects most forms of speech or expression in a limited public forum such as City Council meeting, providing:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

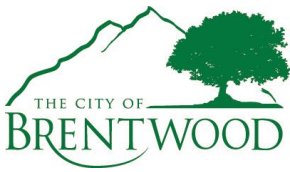
The City Council's current public comment framework does not infringe upon this right. Members of the public who choose not to attend City Council or City Commission meetings may still express themselves regarding items not on the agenda through a number of avenues, including email, traditional mail, and telephonic messages.

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, internal citations omitted.) 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\(c\)](#).) The Brown Act specifically addresses meeting disruptions in a number of ways:

1. **Adoption of reasonable regulations.** The law allows bodies subject to the Act to adopt reasonable regulations to ensure that the public has the opportunity to address the body and individuals do not disrupt the



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proceedings. These regulations may include rules limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. ([Government Code § 54954.3\(b\)\(1\)](#).) In the context of a limited public forum, such as a public meeting, such regulations are reviewed for whether they constitute reasonable time, place, and manner restrictions, and any content-based prohibitions must be narrowly drawn to carry out a compelling governmental interest. (See, e.g., [Kindt v. Santa Monica Rent Control Board \(1995\) 67 F.3d 266, 271](#), finding that “limitations on speech at those meetings must be reasonable and viewpoint neutral, but that is all they need to be.”)

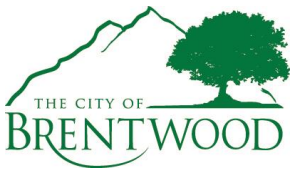
2. **Removal of disruptive speakers.** The law also allows for speakers to be removed if the speaker’s behavior is disrupting the meeting and the speaker does not heed a warning to cease such behavior. ([Government Code § 54957.95](#).) Under these provisions, “disrupting” is very narrowly defined to mean:

engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, one of the following:

- (A) A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to [Government Code] [Section 54954.3](#) or any other law.
- (B) Engaging in behavior that constitutes use of force or a true threat of force.

For these purposes, a “true threat of force” is “a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.”

3. **Clearing disruptive groups.** Moreover, if a group or groups of individuals interrupt a public meeting subject to the Brown Act “so as to render the orderly conduct of such meeting infeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting,” the body’s members may order the meeting room cleared in order to allow the meeting to continue. In that event, members of the press or other news



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media (except those participating in the disturbance) must be allowed to attend the meeting as it continues. ([Government Code § 54967.9.](#))

Notably, the Brown Act does not define – or explicitly prohibit - ‘hate speech.’

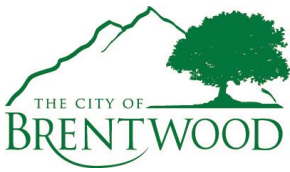
Working within this legal framework, cities are left with a limited array of tools to combat hate speech. Cities can encourage speakers to engage in constructive, rather than abusive, dialogue. Councils can also model good behavior by remaining civil and constructive, even when there are disagreements. 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. However according to at least one California Attorney General opinion¹, the legislative body of a local agency may prohibit members of the public, who speak during the time permitted on the agendas for public expression, from commenting on matters that are not within the subject matter jurisdiction of the legislative body.

Currently, the City Council allows public comment to occur both in person and virtually through Zoom for all agenda items, but does not allow Zoom public comments for items not on the agenda. The vast majority of verbal attacks across the state and country have occurred virtually, not in person, and during public comments for items not on the agenda. The City is not required to offer public participation via Zoom or any other virtual platform when public meetings are taking place and all members are participating in person. Virtual participation was instituted during the early days 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 by the City Council. The majority of local governments across the state are not allowing virtual public comments at this time.

Options to reduce opportunities for hate speech

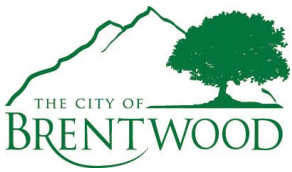
The City Council is in support of continuing to allow for virtual public comment for items on the agenda and expressed interest in expanding virtual comment for items not on the agenda. Below are options for the City Council to consider. None of the options below will stop future hate speech entirely, but are rather tools that might discourage or protect residents from having to listen to the comments.

¹ [78 Ops. Cal. Atty Gen. 224 \(1995\)](#)



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Option	Action	Discussion
A	Include a statement discouraging hate speech on the agenda and have the Mayor or Chair read the statement at the beginning of each meeting and repeat the statement as needed during the meeting.	Attachment 2 includes examples of statements for City Council consideration.
B	For all public comments, enforce City Council/Administrative Policy 110-1 ('Meeting Rules & Procedures') , Section 5.2 ('Rules of Decorum'), which requires, among other things, that "[t]he comments must be pertinent to the agenda item under discussion."	Often during City Council meetings, speakers stray from addressing items on the agenda. Ensuring the Council's Meetings Rules & Procedures are followed with all speakers is key in discouraging hate speech.
C	Require verified Zoom accounts for all virtual comments.	This has not been shown to be effective in other communities and could hinder individuals from participating virtually if they do not regularly use Zoom.
D	Require both registration and authentication on Zoom prior to the start of a meeting.	<p>Authentication allows the City to restrict webinar attendees to sign-in users only, confirming that they have a legitimate email account. This registration allows the City to view and manage the registrants, be aware of how many will potentially join, and it ensures that attendees do not share their attendance link with others</p> <p>This process would limit ability of virtual comments if someone did not register prior to the start of a meeting. It also would not allow the City to prohibit speakers on the basis of their email address.</p>
E	Report all virtual hate speech to Zoom.	Staff can report hate speech to Zoom but it will not stop a person from making inappropriate



Option	Action	Discussion
		comments or creating a new account to log into Zoom.
F	Move public comments for items not on the agenda to the end of the meeting.	Most cases of virtual hate speech happen at the start of the meeting and not at the end. Moving public comments to the end could hinder the ability of individuals to participate virtually as most Council meetings adjourn after 10 p.m.

City Council Statement of Values

As part of the motion for this future agenda item, the City Council discussed the possibility of adopting a "Statement of Values." If the City Council desires a Statement of Values, it is recommended that the City Council either appoint two council members to a new Ad Hoc Committee or assign the effort to the Diversity, Equity, Belonging and Inclusion (DEBI) Committee to draft a Statement of Values for future City Council consideration.

CITY COUNCIL STRATEGIC INITIATIVE

Not Applicable.

PREVIOUS ACTION

Not Applicable.

DATE OF NOTICE

Not Applicable.

ENVIRONMENTAL DETERMINATION

Not Applicable.

ATTACHMENT(S)

1. City Council Meeting Rules and Procedures Policy (110-1)
2. Public Statement Options