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11.

City Council Meeting 3pm

Meeting Date: 01/08/2019

RECOMMENDATION:

That the City Council review the proposed amendments to Chapter 2.12 of the El Cajon Municipal Code related to City Council Procedures and provide direction to the City Attorney.

BACKGROUND:

This past year many City Council meetings were held during which councilmembers raised questions, both during and after the meetings, relating to the application of the City Council Procedures ordinance (Chapter 2.12 of the El Cajon Municipal Code) when councilmembers questioned whether certain conduct of members of the public was in violation of Chapter 2.12. Notable examples include those situations where speakers addressed councilmembers directly, instead of addressing the body as a whole, in violation of section 2.12.150(A)(4); and the situation where a speaker was using profane and vulgar language, whose conduct might have been either "out of order" and terminated by the presiding officer (section 2.12.090(C)(7)), or in violation of the Rules of Decorum set forth in section 2.12.160.

Both Councilmember Goble and Councilmember Kalasho have raised questions regarding the enforceability of Chapter 2.12, and whether some changes were necessary to keep current in the light of the constant changes in court decisions on First Amendment rights.

In reviewing Chapter 2.12 our office found that some amendments should be considered in order to legally apply that chapter to control the conduct of some speakers coming before the City Council. The proposed changes are reflected in the attachment, in redlined manner. In addition to strengthening the efficacy of the rules of decorum (section 2.12.150), we found certain changes that are necessary in order to update the city hall address (section 2.12.040(A), and to properly reference the time of the afternoon City Council meetings (section 2.12.060(C)).

REPORT:

Chapter 2.12 provides the procedures for the conduct of City Council meetings. It applies to not only City Council meetings, but also to meetings of boards, committees, and commissions. (Section 2.12.010.) It defines a "meeting" for the purposes of the chapter, while acknowledging that the definition includes those definitions found in state legislation (i.e., the Brown Act) as well as judicial interpretations. (Section 2.12.020.) Section 2.12.040 establishes the time and place of meetings of the City Council; section 2.12.060 provides guidance on the structure of agendas; section 2.12.070 guides the City Clerk in the preparation of minutes; section 2.12.080 sets forth the rules on voting (including how to treat an abstention); section 2.12.100 provides rules on conducting public hearings; and section 2.12.120 deals with motions by the legislative body.

Chapter 2.12 further sets forth the duties, responsibilities, and powers of the presiding officer. The presiding officer (e.g., the Mayor) is responsible for conducting the meetings of the legislative body. This includes setting time limits for appropriate discussion; opening public hearings; continuing matters; determining whether sworn testimony is necessary from witnesses in a public hearing; and keeping order of the meeting. (Section 2.12.090.)

Other rules found in Chapter 2.12 address the conduct, or decorum, of members of the public. Section 2.12.160 (and, to a certain degree, section 2.12.090) allows the presiding officer to regulate conduct and, to some extent, speech of those appearing before the legislative body.

The City's ordinances must always remain protective of, and compliant with, the First Amendment of the United States Constitution, and section 2 of article 1 of the California Constitution. It is these constitutional protections that must be considered whenever a law, regulation, or action of a governmental agency attempts to address speech and conduct, especially in the setting of a public meeting.

In our review of Chapter 2.12 we first looked to address those sections that Councilmember Goble had identified as needing review. When doing so we also took the opportunity to review those portions of the chapter that provide for the maintaining order and decorum in the meeting, issues previously raised at meetings by Councilmember Kalasho. Finally, we took a careful look at the entire chapter in the light of First Amendment purposes.

Change to section 2.12.040:

The sole change to this section is to replace the old address for City Hall (200 East Main Street) with the current address (200 Civic Center Way).

Change to section 2.12.060:

The sole change to this section is to correct the time of the regular meeting to "three p.m." instead of "four p.m.," as this section currently reads.

Changes to section 2.12.090:

The first change is in paragraph (C)(2), by changing "mayor" to "presiding officer," in order to use the defined term, which applies to not only the mayor on behalf of the city council, but also the chairperson on behalf of other commissions, boards, and committees.

The next change is in paragraph (C)(7), and to add new paragraphs (8) and (9), all of which relate to the power of the presiding officer to act when a speaker is "out of order," and "actually disrupts" the meeting, including (i) taking a recess (paragraph (7)); issuing a warning to a person actually disrupting a meeting, and (if the disruption continues) ordering that person to leave the council chambers (paragraph (8)); and (iii) ordering any person removed from a meeting to be excluded from any additional meetings of the legislative beginning on the same date as the meeting from which that person is removed (paragraph (9)). The changes to section 2.12.090 also makes the final paragraph its own designation as subsection (D).

It is in section 2.12.090 that we recommend the first of many that clarify that any punitive action taken against a speaker not following the "rules of decorum" may only occur if the speaker has "actually" disrupted the meeting. It also provides for a "progressive" manner of handling situations in order to regain control of a meeting that has been disrupted. The chapter will not require that the presiding officer exercise control only through a "progression"; however, in most cases it would be suggested that the presiding officer first attempt to de-escalate the disruption with a warning then, if that isn't effective, a recess for a chance to "cool off" the situation before order the removal of a speaker and an order that prevents that person to returning to another meeting of the body that same day (e.g., a 7:00 p.m. meeting following a 3:00 p.m. meeting).

It is clear, from decisions addressing facial challenges of similar rules of decorum, that the courts will not invalidate an ordinance that requires "actual" disruption by a speaker. Actual disruption occurs when legislative body cannot continue with the progress of its meeting as a result of the disruption and it becomes necessary to somehow end the disruption. This is different than a speaker invoking vulgar or profane speech, but who otherwise abides by an order to comply with the speaker's allotted time to speak (e.g., the three minutes normally allowed a speaker). While it might be desirable to admonish a speaker to stop using vulgarity and profanity, only in the extreme situation where the speech prevents the meeting from continuing, or keeps another member of the public from participating in the meeting, should the presiding officer order removal without following a progression of warnings and recesses.

Note that a person actually disrupting the meeting also prevents others from speaking and participating in the meeting. Thus, refusing to surrender the podium and allow the next person to speak creates an actual disruption as well, even if the speaker engages the legislative body in unnecessary debate, or becomes excessively redundant in delivering his or her message.

Changes to section 2.12.160:

Like the changes to section 2.12.090, the recommend changes to this section are to clarify that enforcement of the rules of decorum, as set out in this section, can only occur when there is an actual disruption of the meeting. Subsection (A) was also amended to make it clear that the chapter applies to members of the public, not only members of the legislative body.

This section also makes it clear that any person willfully disrupting a public meeting can be charged with violating the California Penal Code, for example, section 403, which makes it a misdemeanor for any person to willfully disrupt a public meeting.

It is proposed that subsection (D) make a further exception to allow members of the news media to enter the area between the rostrum (i.e., the raised curved counter, including the speakers' podium) and the council dais without first seeking the permission of the City Council. This commonly occurs when news camerapersons and news photographers covering the meeting of the City Council seek to obtain images of speakers, councilmembers, and the meeting as a whole.

We have also added a new subsection (F), in order to provide a definition of "disrupt." This is necessary to make it clear that conduct actually disrupting the meeting by a variety of methods or means is the type of conduct that could result in punitive action, including removal from the meeting, and being cited for a violation of the ordinance.

Changes to section 2.12.150:

The discussion on this section is taken out of order as it is addressing those concerns expressed by Councilmembers Goble and Kalasho. The first of these proposed changes, in paragraph (A)(4) eliminates the requirement that a speaker must state their name and address. While it can be suggested that a person provide their name and address, we cannot make it a legal mandate. Recognizing that it is only common courtesy that would suggest that a speaker gives his or her name, it isn't legally required, and some people, perhaps, fear retribution from providing a name, which is further re-published through web-streaming on the City's website and videotaped replays on cable television. However, we believe that a speaker can be required to give some "other identifying designation," in order for the Mayor to conduct the meeting properly, and in the event that councilmembers wish to address the speaker in some manner.

The next change is found in paragraph (A)(6) to clarify that a speaker is not to address a question to individual councilmembers, staff, or other persons in the audience, without the consent of the presiding officer. This subsection is an effort to keep the discussions and comments professional, less personal, and to prevent the creation of a debate on an issue. Councilmember Kalasho had also, previously, requested that the city attorney control comments in violation of the present version of this subsection; however, it is not within the city attorney's power to control speech or the manner of speech. On the contrary the power is up to the Mayor and the rest of the City Council.

Finally, Councilmember Goble asked our review of paragraph (A)(8) and whether the City Council can prohibit “anonymous communications.” The change proposed continues to disallow anonymous requests to be on an agenda unless allowed by the majority of the City Council. Further changes to this subsection include allowing anonymity on the part of speakers but points out that councilmembers are free to give anonymous testimony the weight that each councilmember might feel that it deserves. In this regard we have included the final sentence in that subsection to not allow speakers to wear masks or other covering of the speaker’s face, other than for health or religious purposes, for the safety of those attending the meeting.

Attached to this agenda report are the proposed changes to these sections in Chapter 2.12, generally in the order presented in this discussion portion of the agenda report.

Attachments

[Proposed CC Procedure](#)

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