



## MEMORANDUM

TO: Vice Mayor Davis and Council Member Cunningham, Members of the Public Information and Technology Subcommittee

FROM: Michael Roush, City Attorney

DATE: Meeting of September 19, 2018 at 3:30 p.m.

SUBJECT: Draft Civility Policy and Social Media Policy for City Council and Its Appointed Commissions and Committees

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### BACKGROUND

The Committee met earlier this year and reviewed various policies that other cities have adopted concerning civility/decorum policies and social media policies, as such latter policies apply to social media other than those operated by the City itself.

As to a civility/decorum policy, the Committee was not concerned about how City Council meetings are currently conducted but wanted to be pro-active on such issues. Moreover, the Committee expressed that it was important that the Council appointed commissions and committees likewise conduct their meetings in a civil manner.

As to a social media policy, concerns were expressed that members of a “legislative body”—which include persons serving on advisory bodies such as commissions or committees—could, perhaps inadvertently, be conducting improperly a “meeting” as that term is defined in the open government law (the Brown Act) while participating in social media. The Committee wanted to explore whether a policy was in order to avoid this potential Brown Act violation.

### DISCUSSION

#### 1. Civility Policy

The Policy provides generally that elected and appointed officials and City employees will treat members of the public with respect and expect the same in return. Meetings need to be orderly and free from disruption. Persons have the right to express their views but a safe and harassment free environment is to be maintained.

In meetings, Council members and advisory bodies will practice civility and decorum in their discussions and debate. Members will not delay or interrupt the proceedings or interrupt each other. Personal attacks are to be avoided. Members may but are not required to speak on each item. Each member must have the opportunity to speak before another member speaks twice. The Mayor or Chair is responsible to maintain order and a Council member who repeatedly violates the policy may be sanctioned and Council may remove appointed officials who repeatedly violate the policy.

Persons who wish to address the Council or a Commission/Committee are to submit speaker cards prior to the start of the meeting so the Mayor/Chair may manage the meeting. Persons addressing the Council or an advisory body are to address the Mayor/Chair and not other members of the public or staff. Remarks are to be on topic and made without threatening or abusive language. Persons who engage in this behavior or otherwise unreasonably disrupt the meeting will be asked to conduct themselves properly and given a warning. Continued inappropriate behavior will be cause for the Mayor/Chair to request the person to leave the meeting.

## 2. Social Media Policy

Because the context for the Social Media Policy stems from concern that social media such as Facebook or Twitter may easily lend itself to a violation of the open meeting laws (the Brown Act), the Policy sets forth at some length in the Recitals what constitutes a meeting under the Brown Act, what is prohibited under the Act and two common ways that a prohibited serial meeting may occur using social media. For example, a Council member or a member of an advisory body may post an item, or respond to a posting, on social media, whether a public page or closed group, concerning a matter that is within the “subject matter jurisdiction” of the Council/advisory body. If a majority of the Council/advisory body were to respond, even with innocuous terms such as “like”, “surprised” or “angry”, that could be viewed as a prohibited serial meeting because it could be seen as a majority of the Council/advisory body discussing, deliberating or taking action on a matter outside the confines of a noticed public and open meeting.

Accordingly, the Policy provides that Council members, and members of advisory bodies, should refrain from posting on any form of social media, whether a public page or a closed group, any comments concerning topics that are within their subject matter jurisdiction, and refrain from responding to such comments by others or reacting to posts with terms such as “like”, “surprised” or “angry”.

The Policy defines what is meant by “topics that are within the subject matter jurisdiction” as matters that are currently pending before the Council/advisory body or matters that a member of the Council/advisory body knows, or reasonably should know, is likely to come before the member’s body. For example, Council members and advisory body members should refrain from posting on any form of social media comments concerning development of the Baylands, and refrain from responding to such comments, because development of the Baylands, in some form, will be before the Council and its advisory bodies.

If there are questions as to whether a topic is within the subject matter jurisdiction of the Council or its appointed Commissions/Committees, they should be referred to the City Attorney.

#### NEXT STEPS

Assuming the Committee agrees with the Policies either as written or with minor revisions, the next step would be to present these to the full Council with the recommendation of the Committee. The goal would be to have this matter on the Council's October 4 or October 18 agenda. On the other hand, if the Committee requests a number of substantive changes to the Policies, staff will revise the Policies accordingly and return the matter to the Committee for further consideration. If there are questions about the Policies before the meeting on September 19<sup>th</sup>, please call me (925-876-7525).

#### Attachments

1. Civility Policy
2. Social Media Policy for City Council, and Its Commissions and Committees