

City of Brisbane

Agenda Report

To: Honorable Mayor and Members of the Brisbane City Council

From: Michael Roush, City Attorney

Meeting Date: February 7, 2019

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

Recommendation:

Adopt the attached Civility Policy as recommended by the Public Information/Technology Committee; and

Consider adopting the attached Social Media Policy for the City Council and its appointed Commissions and Committees

Background

The then members of the Public Information/Technology Committee (now Mayor Davis and Council member Cunningham) met in the spring of 2018 to review 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.

With that direction, staff prepared a draft Civility Policy and a draft Social Media Policy, both of which would be applicable to the Council and its appointed bodies. Those Policies were presented to the Committee on September 19, 2018.

Both members of the Committee recommended the Civility Policy be adopted by the Council. The Committee members were not unanimous on whether the Social Media Policy needed to be adopted; Council member Cunningham was in favor but Mayor Davis was neutral. Both members, however, recommended the Policy be forwarded to the full Council for its consideration.

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 also 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.

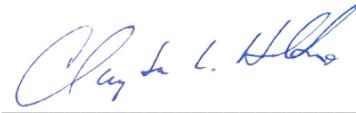
If there are questions as to whether a topic is within the subject matter jurisdiction of the Council or its appointed Commissions/Committees, they should be referred to the City Attorney.

Fiscal Impact

There is no fiscal impact to adopting either or both of these Policies.



Michael H. Roush
City Attorney



Clayton Holstine
City Manager

Attachments

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

CIVILITY POLICY

1. Generally

City of Brisbane elected and appointed officials and City employees will treat members of the public with respect and expect the same in return. The City is committed to maintaining orderly administrative processes in keeping Council, Commission and Committee meetings and City administrative offices free from disruption. This Policy is not intended to deprive any person of his/her right to freedom of expression but only to maintain to the extent reasonable a safe, harassment-free environment in which to conduct the City's business, whether that be at a meeting or in the workplace. The City encourages positive communication and discourages volatile, hostile or aggressive behavior.

2. Meetings

A. Council, Commission and Committee Members

The City Council and its appointed commissions and committees will practice civility and decorum in their discussions and debate. Members will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings, use personal, impertinent or derogatory remarks, nor interrupt any other member while that member is speaking.

- (i) All members have the opportunity, but are not required, to speak on any agenda item. Members may agree to disagree but no member shall speak twice on any given item unless other members have been given the opportunity to speak. All members should focus on the issue and avoid personalizing debate.
- (ii) The Mayor or Chair has the affirmative duty to maintain order and other members will honor the role of the Mayor and the Chair in maintaining order.
- (iii) Any Council member who violates the rules repeatedly shall be sanctioned by the City Council. City Council shall remove any Commission or Committee member who violates the rules repeatedly.

B. Persons addressing the Council, Commissions and Committees

Persons who wish to address the Council, Commissions and Committees are to submit comment cards prior to the start of the meeting so that the Mayor or Chair may manage the meeting. Persons who address the Council, Commissions and Committees must address his/her remarks to the Mayor or Chair and not to any other member of the public nor to City staff. Persons addressing the Council, Commissions and Committees shall not make personal, impertinent, derogatory, unduly repetitive or profane remarks to the Council, Commission or Committee as a whole, to any member of the Council, Commission or Committee, to City staff nor to the general public. Persons addressing the Council, Commissions and Committees shall not utter loud, threatening or abusive language, nor engage in conduct that unreasonably

disrupts or otherwise impedes the orderly conduct of the meeting. Persons who engage in this conduct shall, at the discretion of the Mayor or Chair, be required to leave during that meeting.

C. Enforcement

The rules of decorum set forth above shall be enforced in the following manner: The presiding officer shall request that a person who is breaching the decorum policy be orderly and silent (a warning). If the person after receiving such warning persists in breaching the decorum policy, the presiding officer shall order that person to leave the meeting. If that persons fails to leave the room, the presiding officer may order any law enforcement officer to remove the person from the meeting.

SOCIAL MEDIA POLICY FOR CITY COUNCIL AND ITS COMMISSIONS AND COMMITTEES

- A. The Ralph M. Brown Act, California Government Code, section 94950 and following, provides that City Councils and their Commissions and Committees exist to aid in the conduct of the public's business and that their deliberations be conducted, and their actions taken, openly.
- B. The Brown Act defines a "meeting" to mean any congregation of a majority of the members of the City Council and its appointed Commissions and Committees at the same time and location to hear, discuss, deliberate or take action on any item that is within the subject matter jurisdiction of the City Council or, as to its Commissions and Committees, within the subject matter jurisdiction of such Commission or Committee.
- C. The Brown Act prohibits a majority of the members of the City Council or a majority of its Commissions and Committees, outside a meeting as authorized by the Brown Act, from using a series of communications of any kind, directly or through intermediaries, to discuss, deliberate or take action of any item of business that is within the subject matter jurisdiction of the Council or, as to its Commissions or Committees, within the subject matter jurisdiction of such Commission or Committee (so called "serial meetings").
- D. A serial meeting may occur by either a "daisy chain" or "hub and spoke". A daisy chain occurs when Member A contacts Member B, and Member B contacts Member C, thereby creating a quorum that has discussed, deliberated or taken action on an item that is within the subject matter jurisdiction of the Member's legislative body. A hub and spoke process involves, for example, Member A (the hub) sequentially contacting Members B and C (the spokes) until a quorum has been contacted.
- E. Email and private social media provide opportunities for Council, Commission and Committee members to engage in serial meetings. For example, if a constituent were to send an email to all Council members asking the members about their position on a matter within the Council's subject matter jurisdiction and if an individual Council member were to "reply to all" and indicate a position, that could be considered a prohibited serial meeting. Similarly, on any form of social media, whether a public page or a closed group, to which a majority of the Council, a Commission or Committee has access, a posting, or a response to a posting, by one Council member could be viewed by two other Council members, which could likewise be considered a prohibited serial meeting.
- F. City Council is concerned about these potential serial meetings, most of which would be inadvertent, but nevertheless erode the public's confidence that Council, Commission and Committee meetings only take place in public so that the public may participate fully in the decision making process.

NOW, THEREFORE, the City Council adopts the following Social Media Policy for the City Council and its appointed Commissions and Committees.

1. Concerning topics that are within their subject matter jurisdiction, City Council members should refrain from posting on any form of social media, whether a public page or a closed group, any comments and refrain from responding to such comments or reacting to posts with terms such as “like”, “surprised” or “angry”.
2. Concerning topics that are within the subject matter jurisdiction of their respective Commissions or Committees, appointed Commission and Committee members should refrain from posting on any form of social media, whether a public page or a closed group, any comments and refrain from responding to such comments or reacting to posts with terms such as “like”, “surprised” or “angry”.
3. For purposes of this Policy, “topics that are within the subject matter jurisdiction” of the Council, Commission or Committee (respectively, “the legislative body”) are matters that are currently pending before the legislative body or matters that a member of the legislative body knows, or reasonably should know, is likely to come before that legislative body. By way of example, if the voters were to approve the General Plan Amendment concerning the Baylands, it is likely the property owner will move forward to develop the site. Accordingly, concerning the development of the Baylands, because Commissions and Committees will be required to make a recommendation to the City Council concerning such development, or at least aspects thereof, Commission and Committee members, as well as City Council members, should refrain from posting on any form of social media, whether a public page or a closed group, comments concerning development of the Baylands and refrain from responding to such comments or reacting to posts with terms such as “like”, “surprised” or “angry” concerning the development of the Baylands.
4. Questions concerning whether a topic is within the subject matter jurisdiction of the City Council or a particular Commission or Committee are to be referred to the City Attorney.