



## CITY OF GLENDALE, CALIFORNIA REPORT TO THE CITY COUNCIL

### AGENDA ITEM

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Report: Report on Rules for the Conduct of Council Meetings: Options for Oral Communications and Public Comment on Agenda Items; Matters Related to the Order of Business for Council Agendas; Rules Governing Council Deliberation and Debate; Discussion of Policy for Removing Items from Agenda after Publication; and Rules Governing Decorum and Removing Disruptive Individuals from Council Meetings

1. Motion Providing Direction to Staff

### COUNCIL ACTION

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**Item Type:** Action Item

**Approved for** December 3, 2024 **calendar**

### EXECUTIVE SUMMARY

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The City Council requested a report on public comment on agenda items and non-agenda items during regular meetings, including how other jurisdictions implement and manage public comment. This Report and Exhibit 1 provides a summary of 18 other jurisdictions' policies. The Council also requested a report on rules of decorum and procedure for removing disruptive individuals from Council meetings. Staff seeks Council direction regarding:

- Whether to make changes to the Council procedures for public comment on agenda items and non-agenda items at regular meetings, including the number of comment periods, individual speaking time, total speaking time, ceding of time from one speaker to the next, and deadline for submission of speaker cards or calling in;
- Whether to establish rules regarding Council debate and deliberation including whether to implement time limits for individual councilmember comments;
- A cut-off time upon which no further items on the agenda will be taken up, unless the Council takes an affirmative vote to proceed;
- Removal of the "Agenda Preview" item on the agenda;
- Establishing a procedure for removal of items from the agenda after its publication;
- Modification of the procedure for Councilmember Future Agenda Requests to streamline the discussion during the meetings;
- Consideration regarding the wide angle of cameras during public comments;

- Establishing formal rules of decorum for members of the public; and
- Establishing a formal procedure for terminating a speaker's time and/or removing individuals from Council Chambers for disruptive conduct

## RECOMMENDATION

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That the Council provide direction on the matters addressed in this Report.

## ANALYSIS

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### Oral Communications and Public Comment

#### 1. Brown Act Requirements

The Ralph M. Brown Act Open Meetings Law (“Brown Act”)<sup>1</sup> incorporates public comment as a critical component of meetings of legislative bodies for local government. With respect to public comment, it provides:

“Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body’s consideration of the item, that is within the subject matter jurisdiction of the legislative body . . . .”<sup>2</sup>

Thus, there are two specific requirements related to public comment during regular meetings of legislative bodies:

- First, every regular meeting agenda must allow members of the public to speak on any item of interest within the subject matter jurisdiction of the legislative body; and
- Second, the public must be allowed to speak on a specific item of business before or during the legislative body’s consideration of the item.

For the Glendale City Council, these rules are implemented by permitting members of the public to speak on matters as the item is called on the agenda (typically after presentation of a report), whether the item is a closed session item, consent calendar item, action item, public hearing item or any other item. For public comment on matters not on the agenda, but within the Council’s subject matter jurisdiction, the public speaks under the “Oral Communications” section of the agenda. With respect to Oral Communications, the Council may question or briefly respond to the speaker or refer the matter to staff, but there can be no discussion or decision.

Under the Glendale Municipal Code (“GMC”), Oral Communications is limited to five minutes per speaker, unless the Mayor waives the five minute limitation.<sup>3</sup> Oral Communications is currently near the end of the agenda. The Mayor currently permits speakers who want to speak on non-agenda items to do so under “Community event announcements” subject to the three-minute limit and provided that the speaker cannot then also speak under the Oral Communications item later on the agenda. There is also a limit of five speaker cards for Community event announcements, inclusive of the oral

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<sup>1</sup> Gov’t Code § 54950 *et seq.*

<sup>2</sup> Government Code §54954.3(a)

<sup>3</sup> GMC § 2.04.090

communications speakers.

The Council requested a report on approaches taken by other cities in terms of taking public input on agenda items and non-agenda items, as well as time limits imposed. The Brown Act permits legislative bodies to “adopt reasonable regulations to insure the intent” of the Brown Act’s public comment requirement “is carried out, including but not limited to, regulations limiting the total amount of time allocated for testimony on particular issues and for each individual speaker.”<sup>4</sup> Such regulations must be enforced fairly and without regard to speakers’ viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit can be shortened at the discretion of the chair to accommodate a lengthy agenda.

## 2. Review of Other Jurisdictions

Staff conducted a review of 18 other jurisdictions – 15 cities, two counties (Los Angeles and San Diego), and Glendale Unified School District. (See Exhibit 1). A variety of options are employed to implement and manage public participation by:

- Limiting speaking times allotted per individual. On average, jurisdictions limit speaking time on agenda and non-agenda items to 2-3 minutes per speaker;
- Utilizing a sliding scale to determine speaker time limits based on number of speakers for each comment period;
- Limiting the total overall length of public comment periods;
- Allowing a set amount of time for non-agenda items, e.g. 30 minutes total for discussion of non-agenda items at the beginning of the meeting or prior to discussion/action on business items;
- Reducing the total number of overall periods of public comment;
- Establishing a formal process and limitation regarding the ceding time from one speaker to another (including requiring the person ceding time and the person obtaining the time to both be in Chambers); and
- Establishing deadlines for the submission of speaker cards (e.g., no additional comment cards accepted once the specified agenda item has begun or after the start of the meeting).

Staff seeks Council input and direction on whether it desires to make any changes regarding public comment and oral communications. If Council provides direction on a change in the policy, staff recommends implementing such changes via procedural rules that can be adopted in lieu of current provisions in the GMC pertaining to order of business

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<sup>4</sup> Gov’t Code §54954.3(b).

(§2.04.080), the right to address the Council (§2.04.090), ejection (§2.04.120) and other provisions regarding Council meetings. This would require an amendment to the GMC as well.

## **Other Agenda and Meeting Management Issues**

### **Rules Pertaining to Council Debate and Deliberation**

At the Council Governance Workshop on August 29, 2024, councilmembers expressed support for a limit on councilmember speaking time during deliberation on items. In reviewing the procedural rules of other legislative bodies, staff notes some cities have implemented rules on Council deliberations including rules:

- Prohibiting a councilmember from interrupting a councilmember who has the floor;
- Allowing each councilmember to speak once before a councilmember is given a second opportunity to speak;
- Providing that members shall “confine their remarks to the question under debate and shall avoid personalities” and other rules regarding decorum during debate and deliberation; and
- Providing time limits for each member to speak (for example five minutes for initial comments on an item, and three minutes for second round comments and beyond).

Rules of debate are governed by Roberts Rules of Order, unless the Council has adopted a contrary or supplemental rule. If Council desires to implement rules pertaining to deliberation and debate as outlined above, it should provide further direction.

### **Time Limit on Council Meetings**

In addition to limits and rules on deliberation and public comment, some cities (Burbank, Santa Monica) have a cutoff time after which no further agenda items will be taken up unless the Council votes to proceed. Burbank and Santa Monica both have an 11 p.m. cutoff, with Santa Monica requiring a 2/3 vote to proceed beyond the cutoff and Burbank requiring three affirmative votes to do so. In Burbank, the Council is required to confer with the City Manager prior to taking a vote as to the necessity of proceeding with any pressing matters.

The Council may want to consider a similar time limit for Glendale Council meetings. The Council conducts special meetings, Housing Authority meetings and closed session in the afternoons, sometimes as early as 1 p.m. Conducting business late into the night and sometimes into the early morning hours has the potential to affect the focus and concentration of councilmembers, staff and the public, as well as impact the ability of the

public to fully participate in matters that go very late into the evening.

### Agenda Preview

This portion of the agenda – usually provided by the Assistant City Manager – commenced in the 2000s to provide the public with advance notice of what will be on the next week’s agenda. Given that the City now publishes an advanced agenda forecast on its website, staff recommends removing this portion from the agenda.

### Removal of Items from Agenda After Publication

The Council also inquired about the process to remove or continue a matter once the agenda has been published. City Council Resolution No. 23-50 provides that the “Mayor has discretion to control the timing of the placement on future agendas” subject to consultation with the City Manager and contrary direction by the Council. The policy is silent regarding the removal of an item from a published agenda. The past practice has been to require a Council motion or at least a Council consensus at the meeting to postpone or remove an item once the agenda has been published. Recently, items have been removed by the City Manager after consultation with the Mayor. Council should provide clarity on what policy it wants to implement and follow for removing /postponing an item that has been listed on a published agenda.

### Policy on Discussion of Councilmember Future Agenda Requests

In 2023, the Council instituted a new policy for agendizing staff report requests from councilmembers. Replacing the process requiring a second from a councilmember, the Council amended the GMC and adopted a resolution to require a majority vote to agendize a matter. The “Order of business” for Council agendas now includes “Discussion of Councilmember Future Agenda Requests.”

Since the adoption of this new policy, Council has inquired about revisiting or revising the policy due to the length of debate that has occurred from time to time to decide whether to agendize a matter. Staff seeks Council direction on the policy. One consideration that may be given is to give the councilmember making the request a specified amount of time, e.g. 2-3 minutes, to present the basis for the request and the other councilmembers a specified amount of time, e.g. 1-2 minutes, to discuss whether they agree or disagree with agendizing the matter.

### Wide Angle of Cameras During Public Comment

At the August 29, 2024 Council Governance Session, the Council inquired into showing a wide angle of the Council dais during public comments on agenda and non-agenda items. The City Manager stated he would implement a wide angle as a pilot effort, pending the discussion of this item. Staff seeks Council direction whether to continue the wide angle for public comment, limit it to certain items, e.g. Oral Communication, or discontinue the wide angle. If Council decides to retain the wide angle, staff recommends that the City discontinue the practice for public hearings on quasi-judicial matters as speakers may show drawings, pictures, models etc. that should be captured as part of the record as the

speaker is referring to them, even if the drawings, pictures, models etc. are subsequently made part of the record.

### **Rules for Decorum & Removal of Disruptive Individuals**

The Mayor or presiding officer of a meeting may remove individuals or speakers who are disruptive or disturb a meeting. The authority to remove disruptive speakers or individuals is governed by state law (Brown Act) and case law interpreting the First Amendment of the United States Constitution, along with any adopted local rules or regulations that are consistent with both.

#### **Brown Act Requirements - Rights to Address Legislative Body**

In connection with the right of the public to address the legislative body of a local agency during meetings, the Brown Act also provides that:

- The legislative body may adopt reasonable regulations to ensure that the intent of subdivision (a)[pertaining to public comment] is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.<sup>5</sup>
- The legislative body “shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.”<sup>6</sup>

#### **Brown Act Requirements - Removal of Disruptive Individuals**

With respect to removal of disruptive individuals, the Brown Act provides:

“(a) (1) In addition to authority exercised pursuant to Sections 54954.3 and 54957.9, the presiding member of the legislative body conducting a meeting or their designee may remove, or cause the removal of, an individual for disrupting the meeting.

(2) Prior to removing an individual, the presiding member or their designee shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding member or their designee may then remove the individual if they do not promptly cease their disruptive behavior. This paragraph does not apply to any behavior described in subparagraph (B) of paragraph (1) of subdivision (b).

(b) As used in this section:

(1) ‘Disrupting’ means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders

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<sup>5</sup> Gov’t Code §54954.3(b).

<sup>6</sup> Gov’t Code §54954.3(c).

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 Section 54954.3 or any other law.

(B) Engaging in behavior that constitutes use of force or a true threat of force.

(2) 'True threat of force' means 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."<sup>7</sup>

Thus, the presiding officer may only remove individuals that are actually disrupting, disturbing, impeding or rendering infeasible the orderly conduct of the meeting, and only after providing at least one warning. However, a warning is not required to remove an individual who uses force or a threat of force in a council meeting.

#### Brown Act - Clearing of Council Chambers

The Brown Act also permits the presiding officer to clear the meeting room or chambers in very limited circumstances:

"In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting."<sup>8</sup>

This provision should be used only when a group or groups of individuals are willfully disturbing the meeting and, in the opinion of the presiding officer and the sergeant at arms, order cannot be restored except by clearing the room.

#### First Amendment Principles

The termination of speech or removal of individuals from Council meetings is also subject to the First Amendment, as interpreted by the courts. Indeed, Section 54957.95 of the Brown Act was an effort by the Legislature to codify the holding of one of the

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<sup>7</sup> Gov't Section 54957.95

<sup>8</sup> Gov't Code §54957.5



more recent decisions of the Ninth Circuit Court of Appeals addressing First Amendment issues in the context of a city council meeting.<sup>9</sup> A meeting of a City Council or board or commission is considered a limited public forum under First Amendment principles, created for the discussion of certain subjects.<sup>10</sup> Thus, local agencies have a legitimate public interest in conducting efficient, orderly meetings. In this regard, the courts have held that public agencies may:

- Stop a speaker from engaging in irrelevant speech (speech not on the topic of an agenda item or within the legislative body's jurisdiction) or repetitious speech;
- Impose speaking time limitations; and
- Implement requirements that speech be directed at the body or chair.

Similarly, the courts have held that a presiding officer may terminate the speech of a speaker or remove an individual who is disruptive. As the courts have explained, however, in order to remove a speaker for disruption, the conduct or behavior must actually disrupt, impede or render infeasible the orderly conduct of the meeting. "Actual disruptions means an *actual* disruption. It does not mean constructive disruption, technical disruption, virtual disruption, nunc pro tunc disruption, or imaginary disruption."<sup>11</sup> Whether a speaker may be shut down or individual removed for disruptive conduct depends on the actual impact of that conduct on the course of the meeting.

The following examples illuminate what conduct is and is not disruptive:

#### Disruptive Conduct

- Exceeding the time allotted to speak and not adhering to the presiding officer's order to stop speaking.
- Speaking without first being recognized by the presiding officer (for instance, yelling out from the audience in a manner that disrupts the meeting).
- Specific, credible threats to Council or members of the public.
- Encouraging members of the audience to disrupt the meeting, which results in actual disruption.
- Speaking out of order or yelling to the extent that it hinders another member of the public from addressing the legislative body.

#### Conduct That Is Not Disruptive

- Technical violation of rules of decorum that do not actually disturb a meeting.

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<sup>9</sup> See *Acosta v. City of Cost Mesa* (2013) 718 F.3d 800.

<sup>10</sup> *City of Madison Joint School Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 1267 (1976).

<sup>11</sup> *Norse v. City of Santa Cruz* (2010) 629 F.3d 966, 967 (emphasis added.)

- Speech that is deemed to be merely insolent or impertinent but which does not cause a disruption or constitute a threat of violence.<sup>12</sup>
- Speech or nonverbal conduct that goes largely unnoticed by legislative body and public and therefore doesn't disrupt meeting.<sup>13</sup>
- Personal attacks against individual councilmembers, even if it appears off-topic, as this can be considered protected political speech.<sup>14</sup>
- Criticism of City Council policies, programs, procedures or services.<sup>15</sup>
- Criticism of City officials or employees related to City business.

Further, although the Council may terminate speakers or remove individuals for disruptive behavior, enforcement must be on a "viewpoint neutral" basis. In other words, action against disruptive behavior must be applied evenly without regard to speaker or viewpoint expressed. Thus, for example, if the presiding officer intends to strictly enforce a rule regarding staying on topic it must do so for all speakers regardless of viewpoint.

#### Proposed Rules of Decorum and Procedure for Removing Disruptive Individuals

Following the Brown Act requirements, case law, the City's past practice and custom, and the rules imposed by other jurisdictions, it is recommended the Council adopt a formal procedure regarding what constitutes disruptive conduct as well as a procedure for effectuating removal of disruptive individuals. The following can be included in procedural rules as a basis for terminating a speaker's time or ordering removal of an individual, after appropriate warnings:

- A prohibition on the utterance of threatening, abusive or loud language or sounds, whistling, clapping, booing, hissing, stamping of feet, repeated waving of arms, presenting of signs that interfere with the participation of others in the audience, or other similar disruptive acts;
- A prohibition on any signs, placards, banners/flags, props or similar items larger than 8.5 x 11, illuminated, or attached to any pole, stick or other device;
- A prohibition on all noisemakers;

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<sup>12</sup> See *Acosta*, *supra*, 800 F.3d at 816.

<sup>13</sup> *Norse*, *supra*, 629 F.3d at 976

<sup>14</sup> *Dowd v. City of Los Angeles*, 2013 WL 4039043 (U.S.D.C. – C.D. – Cal. 2013).

<sup>15</sup> Gov't Code §54953.3(c).

- A requirement that members of the public shall only address the body from the audience microphone, unless authorized by the Mayor/Chair to speak from another location;
- A requirement that members of the public shall direct comments to the body as a whole or the presiding officer, and not to staff, individual members of the body, or the public and that no person shall be permitted to interrupt members of the body, staff presentations, or members of the public who are at the microphone during a meeting;
- Speakers must cease speaking immediately when their speaking time has ended;
- Public comment on agenda items must relate to the subject matter of that item; and
- Non-agenda Oral Communications are limited to the matters within the City Council's subject matter jurisdiction.

In accordance with the Brown Act and First Amendment jurisprudence, the Council can adopt a procedure for addressing disruptions:

- The Mayor or presiding officer will provide at least one warning to a speaker that is being disruptive. The presiding officer should explain the conduct that is disruptive, and what will be the consequence of failing to abide by the warning, e.g. that the speaker will be terminated from speaking or removed from Chambers.
- After providing at least one (1) verbal warning, if an individual continues to speak in violation of an order to cease speaking (e.g. is off-topic or has exceed the allotted time) or is otherwise disrupting the proceedings, the presiding officer may order the individual to be removed from chambers. Again, when providing the warning, the presiding officer should explain the conduct that is disruptive, and what will be the consequence of failing to abide by the warning, e.g. that the individual may be removed from the Council chambers. Before ordering the sergeant-at-arms to remove a disruptive individual, the presiding officer should give the disruptive individual the opportunity to leave chambers voluntarily.
- Warnings will not be required for use of force or true threats of force.
- The enforcement of rules – whether it be enforcing the requirement to stay on topic, to stop speaking when the allotted time is up, or removing individuals for disrupting the proceedings – must be neutrally applied and may not discriminate against viewpoint of the speaker/attendee.

## **STAKEHOLDERS/OUTREACH**

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N/A.

## **FISCAL IMPACT**

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There is no fiscal impact associated with this report.

## **ENVIRONMENTAL REVIEW (CEQA/NEPA)**

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This activity involves organizational and administrative activities of the government related to election procedures and eligibility requirements, and such internal procedural and eligibility changes have no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. As such, this action is not a “project” subject to the requirements of the California Environmental Quality Act (CEQA) 14 Cal. Code Regs § 15378.

## **CAMPAIGN DISCLOSURE**

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This item is exempt from campaign disclosure requirements.

## **ALTERNATIVES TO STAFF RECOMMENDATION**

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1. Council can choose not to provide direction regarding public comment, oral communication, rules of decorum and removal of disruptive members of the public.
2. Council can choose an alternative not identified by staff.

## **ADMINISTRATIVE ACTION**

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### **Submitted by:**

Michael J. Garcia, City Attorney

### **Prepared by:**

Michael J. Garcia, City Attorney

### **Approved by:**

Roubik R. Golanian, P.E., City Manager

## **EXHIBITS/ATTACHMENTS**

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1. Public Comment Period Survey