



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: September 3, 2019

Agenda Item 9E  
Approvals:  
City Manager [Signature]  
Dept. Head [Signature]  
Attorney \_\_\_\_\_  
Finance \_\_\_\_\_

**Department:** City Clerk  
City Attorney  
**Prepared By:** Joanne Baade, City Clerk/Legislative Administrator  
Scott C. Smith, City Attorney  
**Subject:** *PROPOSED MODIFICATIONS TO CITY COUNCIL MEETING AND OPERATING PROCEDURES*  
**Fiscal Impact:** None.  
**Background:** Council Policy and Procedure 1201-11 (City Council Meeting and Operating Procedures) was subject to a comprehensive update earlier this year. During and following the City Council's first use of the new Policy and Procedure at its April 16, 2019 meeting, the Council and members of the public had questions and objections to the City Council's interpretation and application of the new Policy. A lawsuit was filed on some of these same issues. Staff has agendized the issue of the Council Policy and meeting agenda template to enable Council to consider possible revisions and clarifications, including modifications relating to the following:

### Speaker Identification at Council Meetings

The first potential modification to the agenda relates to the current agenda verbiage which states *"When the Mayor calls your name, please step to the podium, state your name and the City in which you reside, and make your presentation."* State law requires that persons be permitted to speak without identifying themselves; consequently, Staff suggests that the agenda language be modified to make it clear that speakers are not required to state their name or city of residence. Staff recommends that the current agenda verbiage be replaced with the following: *"When invited by the Mayor, please step to the podium, and if you wish, state your name and the City in which you reside, and make your presentation."*

### 11:00 p.m. Curfew

The current City Council agenda template addresses "Length of Meetings." In 1999, Council added language to the agenda to read: *"At 11:00 p.m., the City Council will determine which of the remaining agenda items can be considered and acted upon at this meeting and will continue all other agenda items to a future meeting."* Despite this enactment, Council has determined consistently to continue its meetings past 11:00 p.m. and to leave the agenda intact. If Council wishes to leave this rule in effect, staff proposes adding it to the meeting Policy as indicated in the recommended version.

**Points of Order**

The existing Policy makes it clear that the Mayor is the parliamentarian of Council meetings, and that the city attorney provides the Mayor assistance in that regard. However, it does not explain how points of order may be raised or how they may be raised by members of the public without unlawfully disrupting the meeting. The proposed amended Policy clarifies that Councilmembers may raise points of order at any time and that members of the public may raise them as part of their oral communications on agenda items. If a point of order arises after a member of the public has made his or her comments, the new Policy provides that the Council shall take up and decide that point of order prior to its approval of that meeting's minutes, as it can with its consideration of reconsideration of other items previously decided. Points of order relating to removal of members of the public for disrupting the meeting are dealt with separately in the Policy. A majority of the City Council may override a parliamentary decision of the Mayor.

**Interruptions and Speaker's Time**

The proposed amended Policy prohibits interruptions of public speakers, with restoration of any time taken on the point of order to the public speaker.

**Serial Meetings**

The proposed amended Policy incorporates provisions of State law allowing staff to brief and provide information to Councilmembers but not as conduits enabling serial conveyances of comments or positions from one Councilmember to another.

**Meeting Disruption**

The proposed amended Policy contains more explicit practices for dealing with meeting disruptions by members of the public, including adequate warning of the possibility of expulsion and cross-references to the Policy's new point of order provisions. Members of the public must be asked if they understand the Council rules of decorum but not to affirm their acceptance of them. They have a right to receive the opinion of the City Attorney on the grounds for their expulsion.

**Summary**

Staff recommends that Council provide direction on the proposed changes to Policy and Procedure 1201-11 as identified in this report, and to direct any other changes that it deems desirable.

***Recommended  
Action:***

STAFF RECOMMENDS THAT the City Council:

- 1) Adopt the proposed amended Policy and Procedure 1201-11 (City Council Meeting and Operating Procedures).
- 2) Direct that staff update the City Council agenda and speaker card templates to conform to the amended Policy.

***Attachment:*** Policy and Procedure 1201-11 Showing Proposed Amendments.

***Notification:*** None



## POLICY AND PROCEDURE

<b>Subject:</b> City Council Meeting and Operating Procedures (Parliamentary Procedures, Due Process, Mayor/Mayor Pro Tempore, Council Correspondence, Meetings, Agendas, and Minutes)	<b>Index:</b> City Council  <hr style="width: 50%; margin-left: 0;"/> <b>Number:</b> 1201-11
<b>Effective Date:</b> April _____ 4 September _____, 2019	<b>Prepared By:</b> City Clerk
<b>Supersedes:</b> Policy and Procedures 1201-1 (Mayor and Mayor Pro Tempore); 1201-2 (Meetings of the City Council); 1201-3 (Order of Business and Preparation of Minutes); 1201-4 (Council Correspondence and Agenda); 1201-5 (Rules of Debate, Decorum, Voting Requirements & Procedures); and 1202-2 (Management/Streamlining of City Council Meetings); <u>and 1201-11 (City Council Meeting and Operating Procedures)</u>	<b>Approved By:</b> City Council on February _____, <del>19</del> September _____, 2019

**1.0 PURPOSE:**

To establish policies for City Council meetings and operations, including parliamentary procedures, due process, election/roles of Mayor and Mayor Pro Tem, agendas, and the preparation of minutes.

**2.0 ORGANIZATIONS AFFECTED:**

City Council  
 City Commissions and Committees\*

*\*Note: Except as otherwise noted throughout this Policy, this Policy shall also apply to the City's Commissions and Committees. In applying this Policy to City Commissions and Committees, the term "Council" shall be interpreted to mean the name of the City Commission or Committee, the term "Mayor" shall be interpreted to mean "Chairperson", the term "Mayor Pro Tempore shall be interpreted to mean "Vice Chair", the term "Manager" shall be interpreted to mean "Director",*

and the term "City Clerk" shall be interpreted to mean the staff member responsible for providing support to the Commission/Committee.

### **3.0 REFERENCES:**

California The Ralph M. Brown Act, GC Section 54950, et seq.

### **4.0 POLICY:**

#### **4.1 Parliamentary Procedures and Due Process**

4.1.1 The proceedings of the City Council shall be guided under the latest revised edition of "Rosenberg's Rules of Order," on all matters pertaining to parliamentary procedure, but no ordinance, resolution, proceeding or other action of the City Council shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow such rules. In the event of a discrepancy between Rosenberg's Rules of Order and this Policy and Procedure, this Policy and Procedure shall prevail.

4.1.2 The Mayor, with assistance from the City Attorney, is designated as the parliamentarian for City Council meetings. The City Clerk shall assist in the City Attorney's absence. Any member of the City Council or the public (pursuant to the process below) may raise a point of order and/or seek the City Attorney's input on parliamentary issues, which shall then be considered by the Mayor. The City Council may override any parliamentary decision of the Mayor with a majority vote. The Mayor may interpret and apply but not amend these policies.

Points of order may be raised at any time by City Councilmembers.

Points of order may be raised by members of the public in connection with their opportunity to speak on agenda items pursuant to Section 4.4.6. The Mayor (or chair) shall rule on the point of order and/or request clarification of the law from the City Attorney and then decide and rule. If the point of order is denied by the Mayor or chair, the person make the point of order may seek a vote of the entire Council or body, which decision shall be final.

Members of the public wishing to raise points of order after their opportunity to speak may submit those points of order in writing prior to the adjournment of the meeting. Items so submitted shall be presented for consideration by the City Council in connection with its approval of the minutes of that meeting pursuant to

Section 4.6 hereof. At that time the Mayor and City Council will review and decide the point of order raised and determine whether it warrants scheduling and noticing of that item for reconsideration.

- 4.1.3 It shall be understood that a member of the City Council or prospective member of the City Council may, in the course of seeking elective office, be asked to state positions on general issues that may eventually come before the Council at a later date. This policy shall in no way impair that Councilmember's right to consider the issue and vote as he/she determines is appropriate.
- 4.1.4 Ex parte communications are communications received outside of Council meetings or hearings. When the Council acts in a legislative role (for example, to adopt general plan or zoning amendments or to adopt ordinances), Councilmembers are permitted to draw upon nearly all observations and considerations they receive inside and outside the Council meeting. On the other hand, when acting in a quasi-adjudicatory role (hearing permits, revocations, and similar non-legislative decisions), the Council, as fact-finder, should limit its consideration of facts to those presented at the hearing, where all sides have the opportunity to hear and rebut testimony given by all participants. To this end, Councilmembers should avoid receiving or gathering information that might otherwise influence its consideration of the written record and any other testimony it hears through the formal hearing process, or at least disclose their receipt of that information.

**4.2 Election of Mayor and Mayor Pro Tempore and Roles of Those Offices**

- 4.2.1 At the first Regular City Council meeting in December of each year, the Council shall elect from its members a Mayor and Mayor Pro Tempore. The new Mayor and Mayor Pro Tempore shall assume office immediately upon election. (*Note: Commissions and Committees shall elect from its members a Chairperson and Vice Chair at its first regular meeting occurring after Council completes its annual appointment process for Commission and Committee members and those members assume office.*)
- 4.2.2 The Mayor and Mayor Pro Tempore shall serve a one-year term at the pleasure of the Council majority.

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- 4.2.3 The Mayor shall act as the primary spokesperson and official representative of the City Council, unless such responsibility is delegated by the Mayor, or otherwise assigned by a majority of the City Council.
- 4.2.4 The Mayor shall preside at all regular, adjourned regular, special and emergency meetings of the City Council, including joint meetings with commissions and committees and closed sessions.
- 4.2.5 The Mayor shall execute all official City documents, warrants and correspondence approved by the City Council.
- 4.2.6 The Mayor is authorized to issue proclamations, commendations and certificates of recognition, which may be presented at Council meetings under Special Presentations. The total time allotted to Special Presentations should, if possible, be limited to 15 minutes per meeting. *(This section does not apply to Commissions or Committees.)*
- 4.2.7 Nothing in this section is intended to suggest that the office of Mayor possesses formal powers or authority in excess of other members of the City Council; rather, the person serving as Mayor is to be recognized as the chairperson of the Council.
- 4.2.8 The Mayor Pro Tempore shall serve and perform the functions of the Mayor in the absence of the Mayor. If both the Mayor and Mayor Pro Tempore are absent from a City Council meeting, the Council members present shall select a Councilmember from those members present to perform the functions of Mayor at that particular meeting.

**4.3 City Council Correspondence**

- 4.3.1 The City Manager, or his/her designee, is authorized to open and examine all mail or other written communications addressed to the City Council as a body, but shall not open correspondence addressed to an individual Councilmember without their express authorization.
- 4.3.2 The City Manager may take action, or direct that action be taken, on issues or requests that do not require Council action. The City Manager shall inform Council when actions are taken on matters of significance or that are likely to be of interest to the City Council.

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#### 4.4 City Council Meetings

- 4.4.1 The date, time and location of Regular Meetings of the City Council shall be established by resolution. At 11:00 p.m. at each meeting, the City Council will determine which of the remaining agenda items can be considered and acted upon at that meeting and will continue all other agenda items to a future meeting.
- 4.4.2 At all meetings of the City Council, a majority of the Council members shall constitute a quorum for the transaction of business. In the event less than a quorum of the City Council is present, the City Clerk shall adjourn the meeting (which may include adjourning to an Adjourned Regular Meeting), post a Notice of Adjournment, and prepare minutes that reflect that the meeting was adjourned due to lack of a quorum.
- 4.4.3 The City Clerk, or Mayor, shall announce an agenda item before discussion on that item commences.
- 4.4.4 Each person desiring to address the Council is requested to submit to the City Clerk a speaker form. After being called upon by the Mayor, the speaker may proceed to the podium. The speaker may state for the record his/her name and city of residence, but shall not be required to do so. ~~Unless additional time is granted by the Mayor (unless overruled by a majority vote~~

~~of Councilmembers present), the speaker shall limit his/her remarks to~~ Members of the public may speak for three (3) minutes. and project applicants and appellants (including members of an applicant's or appellant's project presentation team, when applicable) shall limit their remarks to may speak for a combined total of ten (10) minutes, unless on agenda items. At Council's request where Council is acting in a fact-finding or hearing capacity, the Mayor may grant additional time is granted by the Mayor (unless overruled by a majority vote of Councilmembers present)- to speakers on agenda items.

Speakers on non-agenda items may speak for three (3) minutes during the oral communications - public forum portion of the meeting.

The time that a speaker devotes to responding to Council inquiries shall not be deducted from their allotted speaker time.

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4.4.5 Members of the public may not assign their speaker time to another person.

4.4.6 The purpose of addressing the City Council is to communicate formally with the City Council regarding matters that relate to City Council business or citizen concerns within the subject matter jurisdiction of the City Council. Persons addressing the City Council on an agenda item shall confine their remarks to the matter under consideration by the City Council. Speakers may be asked to clarify how their comments relate to the matter at hand. Speakers may address the entire Council or individual Councilmembers, and, if allowed by the Mayor or chair, City staff.

4.4.7 Once recognized, members of the public shall not be interrupted when speaking unless to be called to order by the Mayor to: (i) curtail extraordinary repetition, (ii) curtail speech that is irrelevant to the City Council's subject matter jurisdiction, (iii) explain how his or her speech relates to the City's subject matter jurisdiction, or (iv) address some other point of order. If a speaker is interrupted to be called to order, the speaker shall cease speaking until the question of order is determined, and if in order, he or she shall be permitted to proceed, with additional time allotted for the time taken to determine the question of order.

4.4.6 4.4.8 In order to avoid repetitious presentations, whenever any group of persons wishes to address the Council with the same message, it shall be proper for the Mayor to request that a spokesperson be chosen by the group to represent the group's position. Speakers shall not, however, be required to abide by such a request.

4.4.74.4.9 To expedite Council meetings, Councilmembers are encouraged to contact Staff prior to Council meetings to obtain answers to questions and to obtain clarifications as needed.

4.4.84.4.10 Staff shall compose Administrative Reports in a clear and concise manner. Staff shall strive to write reports in a manner that can be easily understood by persons that do not have training in the report's subject matter.

4.4.94.4.11 Staff presentations at Council meetings are to be condensed to the briefest extent possible, while still providing a basic overview of the issue under consideration. Staff is encouraged to refrain from reiterating issues previously addressed in the Administrative Report. However, Staff engaged in such communications shall not use these opportunities to



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communicate with the members of the City Council the comments or position of any other member of the City Council on City Council business.

~~4.4.10 Persons addressing the City Council shall do so in an orderly manner and~~4.4.12 Members of the public shall not engage in conduct that disrupts, disturbs, or otherwise impedes the orderly conduct of the City Council meeting. Any person who so disrupts the meeting shall, at the discretion of the Mayor, unless overruled by a majority of the Councilmembers, be subject to removal from the meeting.

~~4.4.11 The purpose of addressing the City Council is to communicate formally with the City Council regarding matters that relate to City Council business or citizen concerns within the subject matter jurisdiction of the City Council. Persons addressing the City Council on an agenda item shall confine their remarks to the matter under consideration by the City Council. Speakers may be asked to clarify how their comments relate to the matter at hand.~~Prior to removing anyone from a City meeting, the Mayor (or other designated chair) shall: (i) notify the person that he/she is in violation of this Section 4.4.12, (ii) specify the specific behavior giving rise to that conclusion; (iii) explain all grounds for the belief that the person's conduct is in violation of law/policy and why such conduct subjects the person to expulsion; and (iv) notify the person that if the conduct continues he/she will be removed. The person receiving such notification shall be asked if he/she understands the conclusion but shall not be required to accept it.

Members of the public receiving notice of disruption pursuant to this section shall have the right, prior to being removed from the meeting, to ask the Mayor to consult with the City Attorney on the grounds for expulsion, and to submit a point of order on the grounds for expulsion. The City Council may override this decision pursuant to Section 4.1.2. The City Attorney shall have a duty to inform the Mayor (or other designated chair) and the public if the City Attorney believes that the Mayor's action is in violation of applicable law.

~~4.4.12~~4.4.13 Motions must be seconded in order to proceed to a vote.

#### 4.5 City Council Agendas

4.5.1 With the exception of items added to a City Council agenda pursuant to Section 4.5.4 of this Policy, the City Manager shall

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be responsible for determining items to appear on City Council meeting agendas.

- 4.5.2 The standard template for City Council agendas shall be established by Council by majority vote. The City Manager shall have the authority to reorganize the template on a case-by-case basis if he/she believes that a variation in the normal order of business is appropriate.
- 4.5.3 Councilmembers may agendize items to enable them to "report out" on matters relating to their own activities, including activities pertinent to their Council-appointed positions on regional commissions, committees and boards, provided the report is informational only. If Council action is being sought, the process defined in Section 4.5.4 of this Policy shall be followed.
- 4.5.4 A member of the City Council may propose at a Council meeting that an item be agendized for future Council discussion, consideration, and/or action. If the proposal is supported by a majority vote of Councilmembers present, subject to notice and hearing requirements, it shall be agendized for a future meeting and noticed as required by law.
- 4.5.5 Notwithstanding Sections 4.5.1 and 4.5.4 of this Policy, the process to review, appeal, or otherwise "call up" decisions by the Planning Commission or other subordinate City bodies shall be subject to the requirements of the San Clemente Municipal Code.
- 4.5.6 Notwithstanding Section 4.5.4, a proposal to reconsider any action taken by the City Council may be raised only at the same meeting or the next regularly scheduled meeting of the City Council after the action is taken and may be raised only by one of the Councilmembers who voted with the prevailing side. Additionally, the motion to reconsider may only be made by one of the Councilmembers who voted with the prevailing side.
- 4.5.7 The City Clerk shall be responsible for the preparation of Council meeting agendas and shall cause copies to be posted on the City Hall bulletin board(s) and City website. Whenever feasible, regular and adjourned regular meeting agendas shall be posted at least six days prior to meetings, but in no event less than the posting time requirements as set forth in State law. In the case of special meetings, agendas shall be posted as soon as practical, but in no event less than the posting time requirements as set forth in State law.

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4.5.8 Consent Calendar items shall be comprised of items that are expected to be noncontroversial. Unless an item is removed from the Consent Calendar by a member of the Council, staff, or the public for separate discussion and action, the Consent Calendar may be acted upon by one motion.

4.5.9 The City Council may waive the reading in full of all Resolutions and Ordinances. The reading of Resolution titles shall be optional. The reading of Ordinance titles shall not be waived.

4.6 **City Council Minutes**

4.6.1 The City Clerk shall have exclusive responsibility for the preparation of the minutes.

4.6.2 The minutes of City Council meetings shall be submitted to Council for approval/modification at a City Council meeting. Any direction for modifications to the City Council minutes shall only be made upon a majority vote of the City Council.

4.6.3 Minutes shall be prepared in brief concise form, in what are commonly referred to as "action minutes". Action minutes memorialize what was *done* at a meeting, as opposed to what was *said* at a meeting. An exception to this guideline is that a brief summarization of comments provided to Council by the public are to be included in the minutes. Additionally, the identity of Councilmembers who make motions, second motions, and cast votes on motions are to be included in the minutes.

4.6.4 Unless the reading of the minutes of a City Council meeting is ordered by a majority of the Council, such minutes may be approved without reading if the City Clerk has previously furnished each Councilmember with a copy thereof.

4.6.5 The approved minutes shall be executed by the Mayor and City Clerk upon approval by the City Council and shall constitute the official record of the City Council meeting.

4.6.6 The City Clerk shall enter the original executed minutes into the official records of the City as a permanent document.

4.7 **Closed Sessions**

4.7.1 The City Council may hold closed sessions during duly-noticed Council meetings on issues authorized by State law.

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- 4.7.2 A City Commission or Committee may hold closed sessions during duly-noticed meetings of its body on issues authorized by State law, the City Council, and the City Attorney.
- 4.7.3 No member of the City Council, employee of the City, or any person present during a closed session shall disclose to any other person the content or substance of discussion or action which took place during the session, unless a majority vote of the Council authorizes such disclosure.
- 4.7.4 Closed sessions shall be limited to members of the City Council, City Manager, City Attorney and/or City legal counsel, as well as staff members and experts designated by the City Manager or City Attorney to attend portions of Closed Sessions relating to specific issues, as permitted by law.
- 4.7.5 To the extent possible, the public will be notified prior to the time that the City Council recesses to closed session as to whether or not a public announcement of action is anticipated following the Closed Session.
- 4.7.6 Where potential plaintiffs and defendants have manifested or communicated their awareness of facts and circumstances and a legal theory connecting those facts and circumstances to potential litigation involving the City, those facts and circumstances, together with (i) the identity of potential parties or (ii) related documentation, shall be disclosed prior to a closed session to discuss anticipated litigation, in accordance with GC 54956.9.