



# AGENDA REPORT

## CITY OF SAN CLEMENTE

### City Council Meeting

910 Calle Negocio  
2nd Floor  
San Clemente, California  
www.san-clemente.org

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**Meeting Date:** 10/18/2022

Agenda Item: 10D

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**Department:** City Attorney  
**Prepared By:** Scott Smith, City Attorney

**Subject:**  
AMENDMENT TO CITY COUNCIL POLICY 1201-11 CITY COUNCIL MEETINGS AND OPERATING PROCEDURES

**Fiscal Impact:**  
No. This policy amendment will add nominal additional work to agenda preparation.

**Summary:**  
This policy amendment implements direction given by the City Council at its October 4, 2022 meeting.

**Discussion:**  
The Ralph M. Brown Act gives the City some discretion in the way it notifies the public of its closed session discussion of “facts and circumstances that may result in litigation,” which must be “publicly stated on the agenda or announced.” (Gov’t Code Subsection 54956.9(e).) Additionally, in discussing a governmental claim, the City must disclose “the receipt of a claim pursuant . . . or some other written communication from a potential plaintiff threatening litigation . . .” (*Id.*)

In a discussion at its October 4 meeting, the Council opted to set a standard policy to use its published closed session agendas to make these disclosures. The attached amendment to Council Policy No. 1201-11 brings this direction to effect.

**Recommended Actions:**  
Staff Recommendation

Staff recommends that the City Council adopt amended policy 1201-11 - City Council Meetings and Operating Procedures.

**Attachment:**  
Amended policy 1201-11 - City Council Meetings and Operating Procedures  
Sample of December 7, 2021 agenda demonstrating linked documents notice template - Closed Session Item C.

**Notification:**  
None.



# POLICY AND PROCEDURE

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|---|---|
| <b>Subject:</b> City Council Meeting and Operating Procedures<br>(Parliamentary Procedures, Due Process, Mayor/Mayor Pro Tempore, Council Correspondence, Meetings, Agendas, and Minutes)   | <b>Index:</b> City Council              |
|   | <b>Number:</b> 1201-11                  |
| <b>Effective Date:</b> October 18, 2022   | <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); 1202-2 Management/Streamlining of City Council Meetings); and 1201-11 (City Council Meeting and Operating Procedures) | <b>Approved By:</b><br><br>City Council |

## 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:**

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 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 making 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.

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.

#### 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, by majority vote, will determine whether to continue the meeting or adjourn.
- 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.

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) may speak for a combined total of ten (10) minutes on agenda items. At Council's request where Council is acting in a fact-finding or hearing capacity, the Mayor may grant additional time (unless overruled by a majority of Councilmembers present) to speakers on agenda items.

Speakers will be called to the podium once Staff concludes its presentation of an item and before Council begins its deliberations. Speaker cards will not be accepted once deliberations have commenced.

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.

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.

- 4.4.8 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.
- 4.4.9 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.
- 4.4.10 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.
- 4.4.11 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 communicate with the members of the City Council the comments or position of any other member of the City Council on City Council business.
- 4.4.12 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 is subject to removal from the meeting.

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.

4.4.13 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 and Mayor in conference shall 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 Two members of the City Council may propose at a Council meeting that an item be agendized for future Council discussion, consideration, and/or action. Subject to notice and hearing requirements, the item shall be agendized for a future meeting and noticed as required by law. Items agendized pursuant to this section shall appear on an agenda under the New Business portion of the agenda and the names of the Councilmembers who agendized the item shall be included with the item description. Staff Reports will only be prepared if a minimum of three members of the City Council vote affirmatively at a Council meeting to direct Staff to prepare a report.

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 Legislative Administrator 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. Regular and Adjourned Regular Meeting agendas shall be posted within 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.
- 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.
- 4.5.10 Members of the public may address Council concerning matters within the jurisdiction of the City of San Clemente, but not separately listed on the agenda, during the Oral Communications portion of the agenda. Speakers may address Council once during either Oral Communications Part 1 or Part 2. Speakers shall be allotted 3 minutes in which to give his or her presentation.

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.

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~~ stated on the agenda for ~~prior to a~~ the closed session to discuss anticipated litigation, in accordance with GC 54956.9.



# CITY OF SAN CLEMENTE

## REGULAR CITY COUNCIL

### MEETING AGENDA

San Clemente Community Center Auditorium  
100 N. Calle Seville  
San Clemente, California  
[www.san-clemente.org](http://www.san-clemente.org)

December 7, 2021  
5:00 p.m. - Closed Session  
6:00 p.m. - Business Meeting

*Information concerning City Council Meeting protocols and procedures is contained at the end of this agenda.*

#### ***RULES FOR ADDRESSING COUNCIL***

- Members of the public may address the City Council on matters within the jurisdiction of the City of San Clemente.
- If you wish to address Council, please complete one of the blue speaker cards located at the entrance to the Community Center Auditorium and deposit it in the speaker box.
- Persons wishing to address Council concerning an **agendized** item will be invited to address Council during the time that Council is considering that particular agenda item. Persons wishing to address Council concerning a **non-agendized** issue will be invited to address Council during the "Oral Communications" portion of the meeting.
- 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. Please limit your presentation to three minutes.

**MISSION STATEMENT**

*The City of San Clemente, in partnership with the community we serve, will foster a tradition dedicated to:*

*Maintaining a safe, healthy atmosphere in which to live, work and play;*

*Guiding development to ensure responsible growth while preserving and enhancing our village character, unique environment and natural amenities;*

*Providing for the City's long-term stability through promotion of economic vitality and diversity...*

*Resulting in a balanced community committed to protecting what is valued today while meeting tomorrow's needs.*

**CLOSED SESSION (5:00 P.M.)**

**A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Existing litigation pursuant to Government Code section 54956.9(d)(1)  
Number of Cases: 3

Case Name: City of San Clemente v. Foothill/Eastern Transportation Corridor Agency and County of Orange  
Case Number: OCSC 30-2017-00934703-CU-PT-CXC

Case Name: Housing is a Human Right v. the County of Orange and City of San Clemente  
Case Number: 30-2019-01098573-CU-WM-CJC

Case Name: Laura Ferguson v. City of San Clemente, et al.  
Case Number: OCSC 30-2021-01221022-CU-WM-CJC

**B. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**

Initiation of litigation pursuant to Government Code section 54956.9(d)(4)  
Number of potential cases: 1

**C. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2)

Number of potential cases: 1

(Correspondence regarding potential claims is linked to agenda.)

December 1, 2021

Eric Sund  
City Manager  
City of San Clemente  
910 Calle Negocio  
San Clemente, CA 92673

By U.S. Mail and E-mail: [sunde@san-clemente.org](mailto:sunde@san-clemente.org)

Re: *Memorandum of Understanding Implementation for SCCEA-Represented Workers*

Dear Mr. Sund:

On November 2, 2021, the San Clemente City Council adopted the November 2, 2021 through June 30, 2024 Memorandum of Understanding (MOU) between the City and the San Clemente City Employees Association (SCCEA). SCCEA is the exclusive representative of workers in the City's General Bargaining Unit (which continues to include workers in those classifications assigned to positions in the Coastal Animal Services Authority (CASA)).

SCCEA rightfully anticipates that every SCCEA-represented worker, including those working in CASA, will receive and be governed by the wages, benefits and other terms and conditions of employment to which they are entitled under the recently adopted MOU. Among those wages and benefits are the 1% wage increase and one-time non-pensionable payment of \$2,500 effective December 3, 2021.

Please confirm to me in writing by 5:00 p.m. on Friday, December 3, 2021, that the City will timely provide to SCCEA-represented workers assigned to CASA positions the 1% wage increase and \$2,500 non-pensionable payment effective December 3, 2021.

In the event you fail to do so, SCCEA will promptly take such action as it deems appropriate to expeditiously enforce the rights of our bargaining unit members assigned to CASA positions.

If you have any questions or concerns, please contact me directly.

Sincerely,

SAN CLEMENTE CITY EMPLOYEES ASSOCIATION  
by ORANGE COUNTY EMPLOYEES ASSOCIATION



Charles Barfield  
General Manager