



CITY OF MENIFEE

SUBJECT: Procedures and Policies Applicable to City Council Meetings

MEETING DATE: January 18, 2023

TO: Mayor and City Council

PREPARED BY: Jeffrey Melching, City Attorney

REVIEWED BY: Rochelle Clayton, Assistant City Manager

APPROVED BY: Armando G. Villa, City Manager

RECOMMENDED ACTION

1. Review and discuss existing City Council procedures and policies as applicable to City Council meetings; and
2. Provide direction (if any) regarding revisions and updates to existing key City Council procedures and policies; and
3. Approve administrative corrections to existing City Council Code of Ethics; and
4. Adopt and approve City of Meniffee's Policy No. CC-04, Social Media for Public Officials.

DISCUSSION

As the City Council begins its new term it is appropriate to review the existing policies and procedures that guide the conduct of City business. In addition to providing a forum to increase awareness of the rules and procedures, this item allows the City Council to evaluate whether any changes or updates are necessary.

In addition to reviewing and evaluating existing policies, this agenda item seeks City Council's review of a proposed new policy that specifically applies to public officials' (including Councilmembers') use of social media. As explained in greater detail below, the policy seeks to balance legal, policy, and practical considerations relating to the use of social media, so that public officials have a clear and uniform set of standards.

Review of Existing Procedures

The applicable policies and procedures are found in three sources: (1) the City Council Code of Ethics, adopted by the Council in July of 2020 (Attachment 1); (2) the Rules of Decorum and Procedures for the Conduct of City Council Meetings, last updated on January 1, 2014 (Attachment 2); and (3) the Municipal Code provisions applicable to the City Council (Attachment 3). Those resources address the following topics:

1. **Council-Manager Form of Government**: The City's procedures emphasize that the City Council's primary role is to set City policy, while the City Manager's role is "responsible for the efficient administration of all affairs of the City which are under his or her control." In other words, the City Council establishes the policy direction of the City, and the City Manager is charged with overseeing the implementation of that policy direction.
2. **Powers and Authority of the City Council**: The City Council has vast power and responsibility to set policy and do all things necessary to protect and advance the general welfare of the residents. Those actions are typically memorialized in an ordinance, a resolution, or a minute action approved by a majority of the City Council. A vote of a majority of the City Council commits the whole of the City Council and the City to a course of action. No City Council member has the power alone to bind or make decisions for the City as a whole. The Mayor is the official head of the City for all ceremonial purposes, and coordinates with the City Manager in the review of agendas for City Council meetings.
3. **City Council Appointments**: The City's adopted procedures describe how the Mayor Pro Tem is selected, how appointments to regional boards and commissions are made, and how advisory bodies to the City Council are formed.
4. **Legal and Ethical Standards**: The Code of Ethics contains comprehensive guidance on the City's ethical standards, beginning with the principle that Menifee residents "are entitled to have fair, ethical, and accountable local government." Among other things, the Code of Ethics affirms City Council members' responsibility to act in the public interest, refrain from abusive conduct, make sure they are informed on public issues, decide issues based on their merits, and refrain from attending meetings between third parties and City staff (unless invited by City staff or directed by the City Council to do so). The Code of Ethics also reinforces City Council members' duties to properly disclose and manage conflicts of interest, and to avoid even the appearance of impropriety.

5. **Decorum**: The Decorum Policy is structured to ensure the City Council's business is conducted in an orderly and professional manner.

- **Council Decorum**: It requires that City Council members be polite, respectful, and courteous to each other, City staff, and members of the public.
- **Council Communications**: It describes how City Council members must communicate during meetings, e.g., City Council members wishing to speak should request the floor by being recognized by the Presiding Officer before speaking” It describes how City Council members must respond to information and comments from the public both during and outside of public meetings.
- **Staff and Public Conduct**: It also sets rules and expectations for the conduct of City staff and members of the public.
- **Voting Process and Procedural Issues**: It establishes the process for making a motion and conducting a roll call vote. It also addresses multiple procedural issues, such as the effect of silence (it is an affirmative vote), the timing and process for a motion to reconsider, the effect of a tie vote, and the rules for determining if a quorum exists. In addition, the Rules of Decorum set Robert's Rules of Order (Newly Revised) as the guide for the conduct of City Council meetings.
- **Agenda Order and Structure**: The Rules of Decorum provide the order of issues presented on the agenda, explain the usage of the consent calendar and City Council member comments portions of the agenda, and provides basic guidance on closed sessions.
- **Formulation of Meeting Agendas**: The Rules of Decorum and the City Council Code of Ethics both contain the policy for placing future agenda items on the City Council agenda. In summary, the City Manager has the primary responsibility for placing matters on the City Council agenda, but two members of the City Council may also request that an item be added.

City staff has identified the need for an administrative correction to section 6.4.2.1.2 of the City Council Code of Ethics, so that it will align with the description of the City Council agendaing process that appears in the Rules of Decorum. Specifically, that section would be replaced with two sections as follows:

6.4.2.1.2. All regular City Council Agendas shall include an item entitled "Future Agenda Requests from Councilmembers." Members of the City Council shall generally use this opportunity to request items be placed on the agenda. If a member of the City Council requests an item to be placed on the agenda and receives the support of at least one other member of the Council, that item will be placed on a future agenda through the agenda setting process.

6.4.2.1.3. In the event that a member of the City Council wishes to request an item be placed on the Agenda outside the regular City Council agenda process, that request shall be communicated to the City Manager for consideration and scheduling in accord with the agenda setting process described in the Rules of Decorum.

6. **Reports of Violations:** The existing policies create an obligation to report violations and establish a procedure for addressing and responding to those reports.
7. **Relationship Between City Council and City Staff:** City staff serves the City Council as a whole, through the authority of the City Manager. To that end, existing policies forbid any City Council request for City staff or legal resources that would exceed one hour. Requests requiring larger commitments of time and resources must be agendaized and approved by the City Council. Likewise, a City Council member may not direct City staff to initiate an action, change a course of action, or prepare any report.
8. **Handling of Confidential Information:** City Council members may not disclose confidential and privileged information, nor may they retain confidential materials provided during closed sessions.
9. **Representing the City:** City Council members may use their official title only when conducting City business, for information purposes, or as an indication of background and expertise. If any City Council member seeks to prepare a letter, the City Manager must authorize it.
10. **Conduct of Meetings:** All meetings must be conducted in accordance with the Ralph M. Brown Act, which contains multiple provisions to ensure that the proposed business of the City Council is disclosed in advance (on a published agenda) and discussed and decided in public.

11. **City Council Compensation and Benefits**: The compensation provided to the City Council is established by statute (Government Code Section 36516) which sets a starting salary based upon City population and allows for an annual increase of 5% per calendar year. The salary of the Mayor has been established by a voter initiative process approved on November 4, 2014, and is set at \$100 per month more than the compensation provided for members of the City Council. If the compensation is increased for the members of the City Council, the salary of the Mayor will increase by the same amount. Applying the Government Code formula would yield a maximum increase of \$260 per month, to a total of \$910 per month for City Council members, and \$1,010 for the Mayor.

The above issues merely summarized to emphasize key items of City Council and public interest. City staff will make a further presentation on the existing policies and procedures and be available to answer any questions or pursue any updates or amendments desired by the City Council.

Consideration and Adoption of a Social Media Policy

Both the City (typically through the Public Information Officer) and public officials use social media to communicate with members of the public. The City uses social media to disseminate information about City business, and to express the official positions of the City. Public officials also use social media to connect with their constituents, and to discuss positions on particular issues.

The connection between a City public official and the City often causes members of the public to attribute public official's communications on social media to the City. City public officials also have access to sensitive or confidential City information and records by virtue of their position, which may damage the City or other persons if disclosed outside of legal avenues.

From a legal standpoint, public officials are subject to laws and restrictions not applicable to the public at large, including the First Amendment related to freedom of speech and the Ralph M. Brown Act related to public meetings. These laws prohibit or otherwise restrict certain social media use.

To account for these legal and practical considerations, and to protect the City's interest in protecting the integrity of the information posted on social media attributed to the City, "City of Menifee Policy No. CC-04, City Social Media for Public Officials" (Policy) has been formulated for Council review, consideration, and adoption. If approved, public officials would be responsible for their own compliance with the Policy.

In summary, the key provisions of the Policy are as follows:

1. **Applicability**: The Policy applies to City Council members, and to all commission and committee members that are subject to the Ralph M. Brown Act's open meeting requirements.
2. **Use of City Assets**: The Policy authorizes public officials to use City assets such as email accounts, logos, staff time, business expense budget, equipment, and subscriptions for social media related to a public official's official capacity with the City. These City assets may not be used for personal, campaign, advertisement, or other purposes. Public officials are encouraged to utilize the City's subscription to ArchiveSocial for record capturing on social media related to City business.
3. **Social Media Posts Related to City Business**: The Policy requires a disclaimer to be included on posts related to City business, which specifies that the content posted does not represent the official position of the City. The disclaimer is not required for content which accurately reflects the City's official position.
4. **Confidentiality**: The Policy prohibits the disclosure of confidential information and records obtained through a public official's position with the City. Public officials are further prohibited from using such information for private interests. Members of the public should be directed to the City Clerk and the California Public Records Act process to access City records.
5. **Legal Compliance**: The Policy reinforces public officials' obligation to comply with applicable law, including the First Amendment of the United States Constitution and the Ralph M. Brown Act. These two laws are broadly described in the Policy to assist public officials in complying with those requirements. In summary, when public official accounts address City business, the First Amendment applies which, among other things, severely restricts the ability to block users or delete comments based on viewpoint or perspective. So rather than deleting comments or posts, public officials are encouraged to report comments to the underlying social media platform when those comments violate the terms of use of that platform. Questions from public officials regarding whether a particular comment or post can or should be removed should be directed to the City Attorney.

The Ralph M. Brown Act imposes additional requirements on public officials use of social media. It prohibits a public official from communicating on City business with a majority of the legislative body on which that public official sits. This can involve as little as "*liking*" a post related to matters within the jurisdiction of that public official's legislative body. To assist in navigating these issues, the Policy outlines examples of

permitted and prohibited social media use under the Ralph M. Brown Act.

Social media used in an official capacity is also subject to the California Public Records Act and records-keeping obligations. As noted, to ensure compliance with this obligation, the Policy encourages the use of ArchiveSocial for record capturing on social media related to City business.

In addition to the foregoing summary, the full Policy is provided as Attachment 4.

STRATEGIC PLAN OBJECTIVE

Responsive and Transparent Community Government

FISCAL IMPACT

There is no fiscal impact associated with the review of the policies and procedures applicable to the City Council. If the base salary for the members of the City Council is increased to the maximum allowed under the provisions of Government Code Section 36516, the monthly salary for each member will increase by \$260 per month for a revised monthly total of \$910 for each member of the City Council and \$1,010 for the Mayor. This equates to an annual increase of \$15,600 per year once the change takes effect. Under California law, such a change could not go into effect until December of 2024 following certification of the next municipal election when new members take office. If an increase is approved, a budget appropriation will be included in the Fiscal Year 2023/2024 Budget.

ATTACHMENTS

1. City Council Code of Ethics
2. Policy No. CC-01 - Rules of Decorum and Procedures
3. Menifee Municipal Code Chapter 2.04 (City Council)
4. Policy No. CC-04 - Social Media for Public Officials