



Item No. 11 Town of Atherton

CITY COUNCIL STAFF REPORT – REGULAR AGENDA

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

FROM: ANTHONY SUBER, DEPUTY CITY MANAGER/ CITY CLERK

DATE: OCTOBER 18, 2023

**SUBJECT: REVIEW MEETING PROTOCOLS, HATE SPEECH AND
REMOTE PUBLIC COMMENT DURING CITY COUNCIL,
COMMISSION AND COMMITTEE MEETINGS AND PROVIDE
FEEDBACK**

RECOMMENDATION

Discuss the recent occurrence of hate speech through remote public comment during the September 20, 2023, City Council meeting, review current meeting protocols and provide feedback to the City Manager regarding remote public comment procedures.

BACKGROUND

As a result of the harmful and disruptive impacts from the occurrence of hate speech through remote public comment during the September 20, 2023, City Council meeting, staff has prepared this report to review meeting protocols and Town obligations. There is no place for hate in the Town's Mission, Vision, and Values for the community or the organization. The disruptive speech that took place on September 20 behind the anonymity of technology that allows remote public comment, was harmful to the community, staff, City Council and disruptive to the meeting. However, such speech in a City Council meeting is also afforded protections under the First Amendment, as described in more detail below. The commenters who delivered the hate speech are technologically adept with remote comment technology, know their rights, are well-organized in their efforts to disrupt meeting proceedings, and achieved such disruption and harm on September 20, as well as at many other public meetings in our region recently.

Staff has evaluated the benefit of the convenience of remote verbal public comments against the potential for future disruption and intrusion. The Council should consider the balance between ensuring public engagement and protected speech rights. Prior to the pandemic, successful and robust public comment was provided through in-person and written engagement. Technological advances that allow remote verbal public comment, has resulted in a post-pandemic citizenry that have grown accustomed to the convenience of new technologies. Most cities in the region implement hybrid meeting technology to allow remote public comment. However, technologies

can be abused, and when the avenues for such abuse become apparent, as with recent events, revisions may be necessary. Staff is confident that continued robust public comment and engagement can continue without allowing verbal remote public comment. While there may be strategies, as described in more detail below, to minimize the harm and disruption of hate speech, if verbal remote public comment or remote phone comment options exist, the First Amendment will allow anonymous hate speech to occur. To balance the goals of encouraging robust public engagement, managing public meetings, and protecting the community and employees, the City Clerk recommends there be a temporary suspension of remote public comment, similar to what other agencies in our region are doing.

ANALYSIS

Recently, jurisdictions throughout the Bay Area, including Atherton, received a number of public comments through the remote access option (Zoom or some other remote access platform), which made antisemitic, white supremacist and anti-LGBTQ+ statements (“Off-topic comments”). These Off-topic comments have been referred to as “hate speech.” Although extremely difficult to listen to, “hate speech” is still speech that is afforded protections under the First Amendment. Courts have held that Council Chambers of a jurisdiction are considered limited public forums that come with regulations that relate to “time, place, and manner.” While a jurisdiction may adopt reasonable regulations to govern the conduct of a public meeting, care must be given to ensure that the regulations themselves do not violate the public’s freedom of expression by constituting a barrier to providing comments or a “prior restraint” on expression.

In terms of conduct during a meeting, courts have found that the First Amendment allows a hateful speaker room to express their opinions unless and until the speech “disrupts” the meeting. For example, courts have validated the removal of persons who were lying prone on the floor making it impossible to continue the meeting. In these instances, if speech or actions disrupt the meeting such that the Council can no longer perform the tasks of the meeting, then the speaker/actor can be removed. On the other hand, courts have also advised that the removal of a commenter who made a Nazi salute was invalid because simply saluting was not a “disruption” of the meeting and therefore removal violated the right to free speech. The court defined “disruption” as an action that “actually disrupt[s]” and not one that merely distresses or offends those in attendance.

In California, the Ralph M. Brown Act applies to meetings conducted by local public agencies to ensure that the public can view and participate in meetings of legislative bodies. The Brown Act requires public meetings to provide the public with the opportunity to comment on the agenda items. At a regular meeting, the public must be able to address the legislative body on “any item of interest to the public, before or during the legislative body’s consideration of the item, which is within the subject matter jurisdiction of the legislative body.” The Brown Act also authorizes a legislative body to adopt reasonable regulations to ensure that the intent of the provisions relating to this public comment requirement are followed, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on individual issues and for each individual speaker.

In 2022, SB 1100 was signed into law which revised the Brown Act to authorize the presiding member of the legislative body conducting a meeting to remove, or cause the removal of, an

individual for disrupting the meeting. Generally, the new law requires removal to be preceded by a warning to the individual by the presiding member of the legislative body or their designee that the individual's behavior is disrupting the meeting and that the individual's failure to cease their behavior may result in their removal. "Disrupting" is defined as engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, one of the following: (1) a failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Section 54954.3 or any other law; or 2) engaging in behavior that constitutes use of force or a true threat of force. However, both the Brown Act and First Amendment, allow restrictions on speech which is not related to an agenda item or about a topic that is not within the subject matter jurisdiction of the legislative body.

The Town must conduct all its public meetings in a manner that is consistent with the foregoing First Amendment rights of speakers, the Brown Act and other relevant regulations such as the City Council's adopted Rules of Procedure and Code of Ethics.

In response to this flood of "hate speech" statements being provided via remote access public comment, several public agencies have decided to terminate the remote access option but allow in-person or written public comments. In San Mateo County: Burlingame, Redwood City, San Bruno, and South San Francisco and Pacifica have all terminated remote access for public comments. Daly City had discontinued remote access public comments prior to the recent "hate speech" incidents. Some cities such as Daly City and Burlingame provide for the option of reading written public comments received by email aloud at the meeting, subject to similar limitations for individual speakers and/or parameters as defined in the meeting agenda, in addition to receiving verbal public comments in-person at the physical meeting location. Some cities such as Belmont, Brisbane, Half Moon Bay, Millbrae, and San Mateo are currently continuing to allow remote access public comments, but many have implemented procedures with more prominent statements regarding the limited public forum and rules to stay on-topic or within subject matter jurisdiction of the city in public comments and the Council's rules for public decorum. However, San Mateo implemented this practice at the October 2, 2023, City Council meeting and still experienced significant disruption of the meeting by off-topic comments categorized as hate speech, even when commenters were muted after receiving sufficient warnings regarding off-topic comment. Additional cities are in the process of determining if and how their current hybrid meeting practices may be adjusted; for some, staff will lead the process and for others the City Council has or will be providing direction.

At a recent City Council meeting, the Burlingame City Council directed that City staff may have the flexibility to make determinations with respect to suspension of remote access public comment; the determination was subsequently made by the City Manager in consultation with the City Clerk to discontinue remote access public comment. The Town has taken this approach to allow staff to lead the process of determining if any process modifications may be necessary for meeting participation and how public comments may be made.

At this time, staff recommends the suspension of remote access for public comment except via direct chat or email to the City Clerk or City Council email addresses in advance of or during the meeting.

Remote Public Participation via Zoom

The Council Chambers has the appropriate technology to allow a hybrid meeting format on the Zoom platform during public meetings. This hybrid meeting format allows the public to access City Council and all Town Committees and Commission meetings remotely to provide public comment during the meeting through the Zoom platform or to attend the meetings in-person and provide public comment at the meeting location. Public agencies are not required to provide remote access for public comments except for instances when a member of a legislative body is participating remotely under the just cause or emergency circumstances provided in Assembly Bill (AB) 2449. Offering this option to the public is within the discretion of the Town, except in those cases when an official wants to participate remotely under AB 2449.

The most significant benefit to the remote access option for public comment is the access it provides to those members of the public who cannot otherwise attend the meeting. Along with providing additional access to meetings, there is an increased risk of receiving disruptive comments.

Strategies for Addressing Off-Topic Comments During Remote Participation via Zoom

If the Council desires to continue to allow remote verbal comments and participation via Zoom, there is no guarantee that the community, staff, and the Council will not be impacted by further disruption via remote public comment. While there are some strategies, summarized below, that can be deployed to minimize the duration of off-topic comments or comments that are not within the subject matter jurisdiction of the Council, the risk will still be present. The following strategies could be considered to somewhat help, if the Council is inclined to prioritize the convenience of remote public comment for community members over the impacts the disruptive comments.

Potential Procedural Strategies

At this time, staff has identified the following three potential procedural strategies:

1. Temporarily move public comments on non-agendized items to after the Consent Items, Public Hearings, and Regular Items on the Agenda. This agenda order change could potentially decrease the number of community members exposed to hate speech; however, it would not change the impact to staff and Councilmembers;
2. Limit the entire time for oral communications to a set period. The exact time would be at the discretion of the Council, possibly 10 minutes. While this time-limit could assist with limiting the number of off-topic comments during oral communications, it would not address those public comments being provided under specific agendized items.
3. Implement procedures to require a cut off time to accepting public comments remotely. Instead of allowing speakers on Zoom to raise their hands at any time during the public comment period, the Clerk could give a specific time within which speakers on Zoom must indicate they want to speak to allow a much more streamlined public comment period.

Unfortunately, the Brown Act prohibits the City from demanding that speakers provide their names (or other information), complete a questionnaire, or otherwise fulfill any condition precedent to attendance. (Govt. Code § 54953.3). Thus, the City Clerk cannot pre-screen or otherwise require self-identification prior to speaking.

Warning System

Several cities have implemented a warning system that could reduce the time the Council, staff, and community are subjected to these Off-topic comments. The Mayor or Clerk could make a statement at the beginning of oral communications highlighting that the meeting is a limited public forum and that all comments must be either within the subject matter jurisdiction of the Town if related to a non-agendized item, or on topic if related to an agendized item. The warning would then state that if this directive is ignored following a warning by the Mayor or Clerk, after consultation with the City Attorney, then the Mayor will direct the Clerk to turn off that speaker's microphone, mute the speaker and potentially remove them from the meeting.

As noted above, this system has limited effectiveness because a speaker will have already verbalized their comments before being warned that their hate speech is off-topic and would likely continue to verbalize such while being warned before being muted. However, this warning could be issued at the beginning of the meeting as a general practice.

Continued Use of Zoom Platform to Observe Meetings

As noted prior, staff recommends that remote public participation be continued, but that the option for verbal comments be eliminated. The City Clerk recommends continuing to allow written public comments in the chat directly to the City Clerk during the meeting or emailed directly to Council or the City Clerk.

The City Clerk receives a copy of any email sent to council@ci.atherton.ca.us.

FISCAL IMPACT

None.

GOAL ALIGNMENT

This Report and its contents are in alignment with the following Council Policy Goals:

- Goal Area E – Strengthen Community Engagement and Transparency
- Goal Area F – Be Forward-Thinking, Well-Managed, and Well-Planned

POLICY FOCUS

The City Council has shown a commitment to increasing community engagement and enhancing transparency wherever possible. Council have directed broad and regular community engagement

which has been led by the City Manager's Office. All Town committees and commissions maintain publicly accessible email accounts that are available on the Town website and monitored by several staff members to ensure access to Council and staff. This access is available beyond public meetings.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,400 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders –to include, but be not limited to, media outlets, school districts, Menlo Park Fire Protection District, service providers (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item has not been before a Town Committee or Commission

ATTACHMENTS

None.