

**TOWN OF SAN ANSELMO  
STAFF REPORT  
September 16, 2014**

For the meeting of September 23, 2014

TO: Town Council  
FROM: Debra Stutsman, Town Manager  
SUBJECT: Council Governance Policies

**RECOMMENDATION**

That Council review the materials presented on the next two top topics, Email/Texting and Agenda Setting.

**BACKGROUND**

At the meeting of March 11, 2014, the Town Council reviewed a number of City and Town Council policy manuals. Topics covered in other cities/towns range from Council decorum to relationship with staff to selection of Mayor and Vice Mayor. After reviewing numerous policy manuals from other cities, Councilmembers outlined the policies that they would like to see formulated for San Anselmo. They are (with the number of times they were mentioned):

- Mayor selection (3)
- Conflict of Interest/Ethics (3)
- Email and texting policy, including who responds to group emails (3)
- Agenda setting by Mayor/Vice Mayor (2)
- Role of reps on regional committees (2)
- Housekeeping items (stopping at 10 p.m., study sessions) (2)
- TC/Staff relationship (2)
- Relationship to press (2)
- Taking positions on legislation (1)
- Consent agenda procedure (1)
- Out of jurisdiction issues, i.e fracking (1)
- Decorum/personal attacks (1)
- TC Appeal process (1)
- Politicking in uniforms (1)

In May Council reviewed policies on Mayor selection and Conflict of Interest/Ethics and approved resolutions in June on those two topics. The next two topics in line are email and testing policy and agenda setting by Mayor/Vice Mayor

**DISCUSSION**

Email and texting policy – Currently the town has an email policy for employees, but no formal policy for Councilmembers. In addition, there is no policy regarding email or texting during a meeting, although it has been the subject of some discussion. Some cities have banned texting or emails during meetings in order to

ensure that the public has confidence that members are not receiving texts or emails that relate to the issue at hand, or exchanging opinions among themselves. Most cities say that those practices haven't happened, but that they are trying to be proactive. Larkspur and Bakersfield have policies which are attached as Attachments 1 and 2.

Agenda setting by Mayor/Vice Mayor – Currently the Town's practice for getting an item on the agenda is as follows. If a Councilmember wishes to place an item on the agenda, it can be brought up during COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS at a regular Town Council meeting. If there is general consensus on bringing the item back, staff will do so. If the item is involved or more information is needed, Councilmembers may ask staff to come back with a staff report that generally describes the issue, so that it can be discussed among the members and a decision made.

Regarding the actual preparation of the agenda, currently the Town Manager prepares the agenda based on the business items that need approval and are ready for review or action by the Town Council. Once a draft agenda is prepared (usually the Wednesday before the meeting), the draft is sent to the Mayor for approval.

Policies are available on this topic from a number of others cities. Policies from Menlo Park, Hermosa Beach, Tamalpais Union High School District, Lakeport and Rio Vista are attached as Attachments 3 – 7.

## CONCLUSION

Staff will prepare draft policies for Council review upon receiving direction on the content of the desired policies. Sample policies from other cities are attached.

Respectfully submitted,



Debra Stutsman  
Town Manager

## Attachments:

1. Email Policy for Councilmembers – Larkspur
2. Use of Electronic communications during public meetings – Bakersfield
3. Placing Items on the Agenda – Menlo Park
4. Agenda Process – Hermosa Beach
5. Board of Trustee Meeting Agenda Development – Tam Union HS District
6. Agenda – Lakeport
7. Agenda – Rio Vista

- b. Council Opinions. Council members do not make separate statements of opinion about Council actions through the press unless the Council has agreed that person speaks on behalf of the Council. The Council discusses issues in open public meetings in Council chambers, not through the newspapers.
- c. Opinion Pieces. Opinion Pieces may be written from time to time by a Council member upon agreement and review by the City Manager.

5. **Council Positions on Issues**

- a. Positions on Local, State or Regional Issues. The City Council does not take positions on local, state or federal issues unless the city is directly affected by the issue, and then acts in concert with MCCMC.
- b. Legislative Positions. The City, through its representative to the MCCMC (Marin County Council of Mayors and Councilmembers) Legislative Committee, jointly takes stands on a focused set of issues agreed upon by MCCMC, namely: unfunded mandates, state intrusion on local government, transportation and housing. (This process gives us plenty to keep track of and provides more clout than acting independently).
- c. Council Regional Representation. Council members represent the City on various outside agencies and boards, and keep the Council (and thus the public) informed in a Council meeting during 'Council members Reports'. The Council should weight in on major issues and give direction to its representative when this occurs e.g. the Cal Park Hill Tunnel, the Larkspur Train Extension, etc.

6. **Email Policy for Council Members**

- a. In order to avoid violating the Brown Act:
  - i. Do not communicate your position on a matter pending before the Council to all or some other members of the Council.
  - ii. If emailing the entire Council, do so only to provide information, and do not solicit a response.
  - iii. When replying to an email from another Councilmember, reply only to the sender, because of the ease of communicating with a much larger audience.
  - iv. Refrain from replying to an email if the reply will be directed to a majority of the Council.
  - v. Email between Councilmembers and staff should be used to share information, confirm meetings, and set up appointments.



- b. If one Councilmember wants to forward or copy another Councilmember's email to someone else, express permission should be obtained from the Councilmember who wrote the email.
- c. Email may discoverable by means of a public records act request or by subpoena; caution with emails is desirable.
- d. Think carefully and cautiously before responding to any email. Avoid making derogatory personal comments using email.
- e. Use of third party contact lists should not be used without the expressed permission of the owner of that information.
- f. When you reply to any email, remember that your reply may inadvertently or deliberately be transmitted to almost any person with an Internet connection.



# ADMINISTRATIVE REPORT

Bakersfield

**MEETING DATE:** December 14, 2011

**AGENDA SECTION:** Consent Calendar  
**ITEM:** 9.f.

**TO:** Honorable Mayor and City Council

**APPROVED**

**FROM:** Virginia Gennaro, City Attorney

**DEPARTMENT HEAD** VG

**DATE:** November 17, 2010

**CITY ATTORNEY** VG

**CITY MANAGER** RS

**SUBJECT:** Resolution establishing City Council policy regarding the use of electronic communications during public meetings

## RECOMMENDATION:

The Legislative and Litigation Committee recommends adoption of the resolution.

## BACKGROUND:

There have been questions as to whether the use of electronic communications is advisable during public meetings. After extensive research by the City Attorney's office, it was found that using electronic devices while a public meeting is in progress may violate the Brown Act, the Public Records Act, and an individual's due process rights.

Accordingly, the City Attorney's office proposed adoption of a policy that would prohibit the use of electronic communications. This policy prohibits such communications between Councilmembers, between Councilmembers and City staff, and between Councilmembers and the public. This policy also ensures that the appearance of impropriety is avoided.

Staff submitted this policy to the Legislative and Litigation Committee at their October 24, 2011 meeting. The Committee reviewed the policy and voted to recommend its adoption by the City Council.

JT:lsc

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ATTACHMENT #2

RESOLUTION NO. 121-11

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BAKERSFIELD ESTABLISHING COUNCIL POLICY  
REGARDING USE OF ELECTRONIC COMMUNICATIONS  
DURING PUBLIC MEETINGS.**

**WHEREAS**, the City Council inquired as to the legality and practicality of Councilmembers using electronic communications during public meetings; and

**WHEREAS**, after extensive research by the City Attorney's office, it was found that the use of electronic communications during public meetings may violate the Brown Act, the California Public Records Act and the due process rights of citizens; and

**WHEREAS**, as a result of such finding, the City Attorney's office proposed adoption of a policy regarding the use of electronic communications during public meetings; and

**WHEREAS**, the Legislative and Litigation Committee has reviewed the proposed policy and is recommending its adoption; and

**WHEREAS**, a resolution of the City Council is necessary to adopt Council policy regarding the use of electronic communications during public meetings.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Bakersfield as follows:

1. The Council finds and determines that the foregoing recitals are true and correct.

2. The attached Council Policy shall be adopted by the Bakersfield City Council as Policy Number 2.15

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I **HEREBY CERTIFY** that the foregoing Resolution was passed and adopted by the Council of the City of Bakersfield at a regular meeting thereof held on DEC 14 2011, by the following vote:

   AYES:  
NOES:  
ABSTAIN:  
ABSENT:

COUNCILMEMBER SALAS, BENHAM, WEIR, COUCH, HANSON, SULLIVAN, JOHNSON ✓  
COUNCILMEMBER None  
COUNCILMEMBER None  
COUNCILMEMBER None

Roberta Gafford  
**ROBERTA GAFFORD, CMC**  
CITY CLERK and Ex Officio Clerk of the  
Council of the City of Bakersfield

APPROVED DEC 14 2011

By [Signature]  
**HARVEY L. HALL**  
Mayor

APPROVED AS TO FORM:

**VIRGINIA GENNARO**  
City Attorney

By [Signature]  
**JESSALEE TALLEY**  
Associate City Attorney

JT:lsc



## COUNCIL POLICY

**POLICY NUMBER:**

**SUBJECT: Use of Electronic Communications During Public Meetings**

**EFFECTIVE DATE:**

**PURPOSE:**

The purpose of this policy is to increase awareness of the legal risks and decorum associated with the use of electronic communications during public meetings by public officials, and to set forth appropriate restrictions on the use of electronic communication devices during public meetings.

**SCOPE:**

This policy applies to every member of the City Council and those present during public meetings.

**DEFINITIONS:**

"Electronic communications" and "electronic means" includes, but is not limited to, information received or sent by emails, texts, instant messages, chatrooms and telephone calls.

"Official City business" means information regarding an issue that is relevant to a matter within the purview of the City Council.

**PART I:**

It is the policy of the City Council to prohibit the use of electronic communications during public meetings. This includes, but is not limited to, the following:

- A. Communications between Councilmembers via electronic means.
- B. Communications between Councilmembers and members of City staff via electronic means.

CITY OF BAKERSFIELD  
ORIGINAL



C. Communications between Councilmembers and the public via electronic means.

**PART II:**

It is the policy of the City Council to strongly discourage members of the public from communicating via electronic means during public meetings in order to eliminate distractions, interference with broadcasting and exposure to legal challenges.

**RETENTION:**

If a Councilmember receives an electronic communication related to Official City business during a public meeting, that Councilmember must provide the City Clerk with a copy of the electronic communication not already maintained by the City as soon as reasonably practicable.

## C H A P T E R 3

# City Council Meetings

## General Procedures

By resolution, the City Council has adopted a modified version of Roberts Rules of Order.

**Presiding Officer:** The Mayor is the presiding officer and acts as chair at Council meetings. In the absence or incapacity of the Mayor, the Mayor Pro Tempore serves as presiding officer.

**Seating arrangement of the Council:** The Mayor Pro Tempore is seated immediately next to the Mayor. The Mayor, with the approval of individual Council members, shall establish the seating arrangement for regular Council meetings.

**Quorum:** Three-fifths of the Council members constitute a quorum for the transaction of business.

## Meeting Schedule

The Council approves and follows an annual calendar that reflects its priorities and coincides with the budgeting process, beginning at the start of the calendar year. Project priorities are ranked in February for the following fiscal year, in order to reflect the commitment of resources required. Other Council priorities are overlaid on the calendar as time permits.

Regular meetings are usually held in the Council Chambers, 701 Laurel Street, on Tuesdays at 7 pm, with study sessions and closed sessions generally being convened earlier, as needed, or at the end of the meeting at the conclusion of public business.

On occasion, the Council meeting will be held in alternative locations such as the Senior Center. No Council meeting will typically be held in the event that a regular meeting of the Council falls on a legal holiday or the day after a holiday. Other meetings throughout the year may be cancelled as well. Council Members should inform the City Manager's secretary as soon as possible if they intend to be out of town on a set meeting date. On occasion, arrangements may be made in order for Council Members to remotely participate in Council meetings by telephone conference call when out of town.

## Special Meetings

Special meetings may be called by the Mayor or by three members of the City Council. Written notice must be given to the City Council and to the media 24 hours prior to a special meeting. No business other than that officially noticed may be discussed.

**Public Comment:** At all regular and special meetings, public comments must be permitted before or during consideration of any agenda item. Public comment is appropriate on any matter within the jurisdiction of the City Council.

**Meeting Notices and Minutes:** Notice requirements of the Brown Act are complied with for all meetings; minutes of the meeting are taken by the City Clerk or designee and made available for public inspection.

## Development of Agenda

\* The City Council adopts a yearly meeting calendar identifying meeting dates and cancellations to aid members and staff with planning and scheduling. A medium-range "tentative" Council calendar that reflects an estimate of when various items will be scheduled over the next few weeks is available on the City's website. A copy of the draft agenda is transmitted to the Mayor for review on the Monday one-week prior to the meeting. Staff is required to submit reports for a Tuesday Council meeting to the City Clerk by noon on the Thursday of the week preceding the meeting. All agenda materials are available after 5:30pm on the Thursday before the Tuesday Council meeting. Website posting includes a tentative Council calendar that shows Council meeting dates and planned agenda items 3-5 weeks in advance.

Given this agenda development schedule, it is usually extremely difficult when Council requests at a Tuesday meeting that a report be prepared for consideration the following week. For this reason, it will usually require at least one week for the preparation of a report requested by the City Council. Complex reports, of course, will require more time to prepare, and an estimated time of completion can be provided to the City Council. The ability to schedule new agenda items depends on the nature of the item itself, other agenda subjects that are already scheduled and the amount of time available.

## Placing Items on Agenda

**City Council:** A Council Member may request an item be considered on a future agenda and, upon agreement of a majority of Council, staff will prepare a staff report if formal Council action is required. Council Members may make this request verbally during a meeting or may submit written requests. Normally, the process involves two steps: initial consideration of the request by the full Council at the soonest possible regularly scheduled meeting; and, if a majority agrees, the matter is then scheduled for further consideration on an upcoming meeting agenda.

**Members of the public:** A member of the public may request that an item be placed on a future agenda during public comment or through other communication with Council Members. Upon approval of a majority of Council, the item will be agendaized and a staff report may be prepared. The City Manager will inform the Council of the potential impact the request will have on established priorities or staff workload and seek approval by the City Council before authorizing the work or scheduling the item as appropriate.

**Emergency and Non-Agendaized items:** Emergency and non-agendaized items may be added to an agenda only in accordance with state law. Emergency items are only those matters affecting public health or safety such as work stoppages, disasters and other severe emergencies. Adding an emergency item requires a majority vote. Emergency items are very rare. More likely, after the agenda is posted an item arises that the Council would like to act on. Non-agendaized items may be added to the agenda only if the Council makes findings that (1) the need to consider the item arose after the posting of the agenda, and; (2) there is a need to take immediate action at this meeting of the City Council. These findings must be approved by a 4/5th vote; if less than five members of Council are present, the findings require a unanimous vote of those present.



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| <b>Protocol 4</b> | <b>Agenda Process</b> |
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- A. Placing an item
  - Contact City Manager or
  - Place on "Other Matter" for Council direction.
  - Two Councilmembers will determine the placement on a future Council agenda for initial first-time discussion with brief staff report and opportunity for Council to give direction. First-time represents items not discussed by current Council body.
- B. Question on item
  - Contact (email or call) Department Director, with a copy to City Manager.
  - Presentation will incorporate the questions.
  - Information will be shared with all Councilmembers.
- C. Agenda Preview
  - Identify topics for next Council agenda.

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| <b>Protocol 5</b> | <b>Communications: Council and Staff</b> |
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- City Manager will share the same information at the same time with all Councilmembers.
- City Manager will use Council as a resource.
- City Council and staff should avoid surprises or last minute items/information.
- City Manager should inform Councilmember on topic of potential impact.

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| <b>Protocol 6</b> | <b>Employee Contact</b> |
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- A. Employee initiated
  - Report contact to City Manager on topics: employment, management or policy direction.
  - Refer employee to supervisor or Department Head.
- B. Council initiated
  - Social contact only.
  - If a community issue of performance, contact the City Manager and not direct the City employee.

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| <b>Protocol 7</b> | <b>Email Guidelines</b> |
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- Communication from Council to Council majority sent to Clerk.
- For private communications, Council should use phone or personal email address.
- Avoid "Reply to All".
- Use FYI for share information no reply.
- Hermosa Beach address is a public record.

**Topic** Visiting Schools  
concern about student safety.



**Topic** Board of Trustee Meeting Agenda Development

**Rationale**

- Effective meetings are the result of well-planned agendas.
- Adequate time is needed for staff members to develop agenda items thoroughly and to post agendas in compliance with the Brown Act.
- An established and transparent agenda development process enables all stakeholders to request that an item be agendaized for board discussion or consideration.

**Protocol**

- All agenda items must be submitted to the Executive Assistant to the Superintendent and Board of Trustees by noon on Tuesday the week prior to a board meeting.
- The board president, clerk, and superintendent will meet on the Tuesday prior to the board meeting to determine the closed, open, and consent agendas.
- All back up material for agenda items must be submitted by 4:00 p.m. on the Wednesday prior to the board meeting.
- All agendas must be publically posted 72 hours prior to the meetings.
- All agendas and back up materials are posted on the district's Agenda Online website. A link is available on the front page of the district website.
- Generally, agenda items will be discussed by the board at a meeting and brought back for action at a future meeting.

**Topic** Board Governance Self-Assessment

**Rationale**

- Conducting a governance self-evaluation demonstrates accountability to the community and the willingness of the governance team to strengthen and improve governance practices.

**Protocol**

- The board supports continuous improvement through an evaluation of governance practices and effectiveness.
- Annually, the board will schedule time to reflect on governance practices and participate in a self-evaluation process.
- The process will identify commendations and recommendations for improvement.
- The board may identify one or two annual governance goals for strengthening the governance team's performance.

**Topic** Closed Session Practices/Confidentiality

**Rationale**

The Brown Act established conditions for discussion of some board business in confidential, closed sessions. The Brown Act strongly supports the "public's right to know" but recognizes that some highly sensitive matters must be discussed in a confidential setting, in part to protect the

- 1) Use of the Council Chambers by City commissions, committees, and other advisory bodies shall take precedence over any other group or agency.
- 2) Regularly scheduled meetings by other agencies and groups shall be discouraged.

## 4.2 AGENDA

### 4.2.1 ESTABLISHING THE COUNCIL AGENDA

The purpose of the agenda is to provide a framework within which Council meetings can be conducted and to effectively implement the approved Council Goals, Financial Plan and Budget, and also work programs, objectives, and business of the City as established by the present or earlier City Councils. Agenda items also include recommendations to the City Council from advisory bodies, land use and zoning actions or appeals, bid and purchasing procedures, and mandates from other levels of government. Staff shall work within the policy context established by the Council and will not arbitrarily place matters on the agenda that are outside the scope of existing work programs of the City, except as approved by the Mayor or through the City Manager who is required to inform and advise the Council of matters necessary to the proper operations and well-being of the City.

The process for determining the format and order of the agenda is based primarily on the order of business adopted by the City Council (See Section I.B.7). The process for establishing the order of specific business and public hearing items is a collaborative one determined largely by anticipated public attendance (those matters involving greater audience attendance are usually scheduled ahead of other items). The final agenda is set subject to approval of the City Manager.

### 4.2.2 PLACING AN ITEM ON THE AGENDA (COUNCIL MEMBER)

Any Council Member may request an item be placed on a future agenda by submitting a request, orally or in writing, to consider the matter and by discussing the request during the Communications section of the regular agenda. Upon consensus of a majority of the Council, staff will prepare a staff report if formal Council action is required. An individual Council Member may place an emergency item on the agenda with a minimum of 72 hours legal notice and a memorandum from the City Council Member to the Council and staff setting forth the substantive issues of the item. For the purpose of this paragraph, emergency shall arise in those limited situations where an item requires immediate action, and the need to take immediate action came to the attention of the Council Member subsequent to the distribution of the agenda.

### 4.2.3 PLACING AN ITEM ON THE AGENDA (ADVISORY BODIES)

Recommendations made by advisory bodies as part of their normal scope of duties and responsibilities shall be timely placed on the City Council agenda by staff, who shall comply with the City's approved Council Agenda Preparation Policy.

### 4.2.4 PLACING AN ITEM ON THE AGENDA (THE PUBLIC)

During Citizens' Input, a member of the public may request an item be placed on a future agenda, and upon consensus of a majority of the Council, a staff report will be prepared and approved by the City Manager or his/her designee.

**CHAPTER 4****CITY COUNCIL MEETINGS****Regular Meeting Dates and Times**

The regular meetings of the Rio Vista City Council are set by ordinance. The agenda for these meetings shall be posted at least 72 hours prior to the scheduled meeting. (Gov. Code 54954.2) Packets normally are distributed to the Council the last working day of the week prior to the Council meeting.

Closed sessions usually follow the regular agenda. The Council may conduct a closed session as a special meeting prior to the regular meeting if circumstances require. Closed sessions will be noted on the agenda.

**Special Meetings/Study Sessions**

Special meetings may be requested by the City Manager and called by the Mayor for urgent matters that cannot wait for a regular meeting or a study session (Gov. Code 54956).

Study Sessions are generally held on the fourth Wednesday of each month at 5:30 PM. The time and date of this meeting may be changed by consensus of the Council. The purpose of this meeting is to allow for extensive discussion of issues and to give direction to staff for final action. Although decision items should be placed on a regular meeting agenda, they may be placed on a study session agenda when a decision is necessary before the next regularly-scheduled meeting.

**Attendance/Absences**

Council members should inform the City Manager's Administrative Assistant or the City Manager as soon as possible if they must miss a Council meeting. A quorum of three Council members must be present to hold a meeting. If a quorum is not possible, the meeting must be cancelled and the agenda put off to another meeting. If necessary, a special meeting with a quorum present may be held to consider those items of urgency.

**Agendas****Placing Items on the Agenda**

*For items requiring preparation of a staff report:* Any Council member may request through the Mayor an item be placed on a regular or special meeting agenda. The Mayor will discuss with the member the time frame desired and any delays necessitated by crowded upcoming agendas. The Mayor may ask the Council member to obtain consensus from a majority of Council members for an item to be placed on a future agenda during the report portion of a meeting. This will only be done for controversial issues.

*For items of discussion not requiring a staff report or research:* A Council member may request placement of this item on a future agenda during their report portion of a regular meeting. The item will be agendized by agreement of a majority of the Council.

*For items requested by the public:* A member of the public may request an item be placed on a future agenda during public comment or through other communication with Council members. Upon agreement of a majority of the Council, the item will be agendized for a future meeting and a staff report will be prepared and approved by the City Manager.

*Emergency and Non-agendized items:* Emergency and non-agendized items may be added to an agenda only in accordance with state law. Emergency items are only those matters affecting public health or safety such as work stoppages, disasters and other severe emergencies. Adding an emergency agenda item requires a majority vote. Emergency items are very rare. More likely, after the agenda is posted an item arises that the Council would like to act on. Non-agendized items may be added to the agenda only if the Council makes findings that (1) the need to consider the item arose after the posting of the agenda and; (2) there is a compelling need to take immediate action at this particular meeting of the City Council. These findings must be approved by a  $\frac{4}{5}$ <sup>th</sup> vote; if fewer than four members of Council are present, the findings require a unanimous vote. Alternatively, if the matter is urgent, a special meeting for that particular item may be called for just prior or just after the current meeting. This requires a 24-hour notice.

### **Finalizing the Agenda**

The Mayor and City Manager meet weekly to discuss upcoming items to be placed on the agenda and the best schedule to get city work accomplished. Agenda items may be moved from one meeting to another based on completeness of staff reports, urgency items needing approval and number of discussion items on the proposed agenda.

As a matter of policy, the City Clerk has overall responsibility for preparing the agenda, gathering the staff reports and arranging for copying in time for distribution to the Council, staff and public. The City Clerk will establish deadlines for submitting reports. If a report is not submitted and approved by the City Manager and, when necessary by the City Attorney, by the established deadline, it may be deemed not ready and listed on another meeting agenda.

### **Public Comment**

All persons wishing to speak during a Council meeting shall complete a speaker's card prior to speaking and leave it on the podium. Written statements may also be left at the podium and will be distributed to staff, Council, and made part of the record.