



CITY COUNCIL AGENDA REPORT

MEETING DATE: February 7, 2012 ITEM NUMBER: _____

SUBJECT: REGULATING E-COMMUNICATIONS DURING CITY COUNCIL MEETINGS

DATE: FEBRUARY 7, 2012

FROM: CEO'S OFFICE

PRESENTATION COUNCIL MEMBER LEECE

BY:

FOR FURTHER INFORMATION Tom Duarte, City Attorney
CONTACT: 714 446-1400

DESCRIPTION:

Council Member Wendy Leece requested staff provide information and sample policies regarding the use of electronic communications (e-communications) during City Council meetings. Any proposed policy would apply to City Council, Boards, Commissions, and Committees.

RECOMMENDATION:

Provide direction to staff regarding drafting an e-communication policy.

BACKGROUND:

Currently, the City does not have a policy regarding e-communications received and sent by council members during City Council meetings. Some cities have policies that either limit or prohibit the use of e-communications by council members during public meetings. Generally, the purpose of these policies is primarily to avoid potential Brown Act violations. The Brown Act requires that matters within the city's jurisdiction be discussed by the City Council in a manner that provides access to the public, subject to some narrowly defined exceptions. To that end, the Brown Act requires all communications by council members during council meetings on topics that are within the jurisdiction of the city to be open to the public. This includes e-communications.

ANALYSIS:

In general, a Brown Act violation occurs when a quorum of council members engage in a discussion or transact business that is within the city's jurisdiction, outside of a public

meeting. Cal. Gov. Code § 54952.2. Further, Government Code section 54952.2(b)(1) states that:

“[a] majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, **use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.**” [emphasis added]

This statute applies even though e-communications are sent and received during an authorized public meeting. At present, the City does not have a policy prohibiting e-communications during public meetings. While not all e-communications are per se violations of the Brown Act, if an e-communication occurs among a quorum of council members regarding matters within the city’s jurisdiction, then a Brown Act violation might occur (i.e. no opportunity for the public to testify, council deliberation not viewed by public, etc.). Therefore, a policy regulating use of e-communications during council meetings might ensure such communications do not occur.

Furthermore, e-communications sent by a member of the public to a council member during a public meeting (i.e. individual sends an e-mail to a council member regarding an issue before the city council) presents another potential Brown Act violation. Government Code section 54957.5 requires that agendas or any other writings distributed to the majority of the members of Council for discussion or consideration at a public meeting must be made available to the public upon request. Therefore, if a majority of the council members receive an e-communication from a member of the public regarding a matter before Council, then it must be made available to the public.

ALTERNATIVES CONSIDERED

1. Consider adopting an e-communication policy regulating e-communications by members of City Council, Boards, Commission and Committees that occur during public meetings.
2. Receive and file.

FISCAL REVIEW:

No fiscal review is required for this item.

LEGAL REVIEW:

The City Attorney has reviewed the staff report and attached policies.

THOMAS R. HATCH
CHIEF EXECUTIVE OFFICER

THOMAS P. DUARTE
CITY ATTORNEY

ATTACHMENTS: 1 Electronic Communication Policy for the Cities of Saratoga Dixon

City of Saratoga:

“City Council members shall not use E-Communication at any time during a meeting of the City Council at which he or she is in attendance. No Commissioner may use E-Communication at any time during a meeting of the Commission of which he or she is a member at which he or she is in attendance. The forgoing limitation shall not apply to receipt of telephone calls or text message from family members in the event of an urgent family matter; a Council member or Commissioner wishing to respond to such a message during the meeting shall do so during a recess or shall excuse him or herself from the meeting to place the return call or text in a manner that does not disrupt the meeting.”

City of Dixon

Dixon’s E-Communication policy during meetings is part of a larger policy that governs the use of electronic media that covers meetings of various city boards and committees on issues that range from distribution of agendas via email to the content of certain communications.

“Use of E-Communications During Meetings: During City Council, Board, Commission and Committee meetings that are noticed and open to the public pursuant to the Brown Act, the use of Electronic Media by members to access the internet or to receive and send email or text messages from other members of the public, is not permitted. This prohibition shall not apply to email or text messages from or to family members, family care givers, or other urgent personal or business matters that do not relate to City business.