



CITY OF DEL REY OAKS

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DATE: February 28, 2023

TO: Honorable Mayor and City Council

FROM: John Guertin, City Manager

SUBJECT: Consider Adoption of Council Policy Governing Use of Electronic Communications Devices During Public Meetings

CEQA: This action is not subject to the California Environmental Quality Act (CEQA) as it is not a project pursuant to Guidelines Section 15378 (b)(5) because it is an organizational or administrative activity of the City that will not result in direct or indirect physical changes in the environment.

Recommended Action

Adopt the proposed policy.

Discussion

It is not uncommon for cities to have policies regarding the use of electronic communications during public meetings by members of their legislative bodies, appointed committees, and commissions. Staff have found several examples of policies that ban, limit, or discourage the use of cell phones, computers, and tablets to communicate during meetings. After review and analysis of the various options available, staff has drafted the proposed policy based on best practices and to ensure that all public meetings are conducted in accordance with all applicable laws, rules and regulations, including, without limitation, the Ralph M. Brown Act ("Brown Act"); to ensure that all hearings and deliberations that occur during public meetings comply with due process and result in a complete administrative record; and to preserve proper decorum preventing behavior that might lead to the perception that a public official is not fully engaged..

While the Brown Act does not specifically prohibit text messaging or similar communications during meetings, use of electronic communication devices has the potential to create an appearance that officials are either not paying attention or are engaged in communications to which the public is not privy. However, such communications may lead to a Brown Act violation if/when text messages or emails among decision makers during meetings contribute to collective concurrence on a matter within the body's purview. It should also be noted that the California Supreme Court has expanded local agency public records search obligations under the Public Records Act to include public employees' and officials' personal accounts or devices, if those devices are used to communicate on items which are related to City business.

The proposed policy provides a reasonable set of limitations (see Attachment).

Fiscal Impacts

There is no fiscal impact.

Attachments:

- Draft USE OF ELECTRONIC COMMUNICATION DEVICES
IN PUBLIC MEETINGS POLICY

Respectfully Submitted,

John Guertin
City Manager

CITY OF DEL REY OAKS
USE OF ELECTRONIC COMMUNICATION DEVICES
IN PUBLIC MEETINGS POLICY

Special Policies for Use of Electronic Communication Devices at Public Meetings:

This provision governs the use of all types of electronic devices that are designed or may be utilized to electronically communicate, or to process, transmit or store information, such as computers, cellular telephones, smart phones, iPads, tablets or similar ("electronic communication devices") by the city council, and all city board, committee and commission members ("city officials") during meetings that are open to the public and subject to the Brown Act ("public meetings"). For purposes of this provision, the use of the phrase "participating in a public meeting" for city officials means that the city official is sitting at the dais and the public meeting is in session. This provision is intended to promote the proper use of electronic communications devices by city officials while participating in public meetings in order to ensure that all public meetings are conducted in accordance with all applicable laws, rules and regulations, including, without limitation, the Ralph M. Brown Act ("Brown Act"); to ensure that all hearings and deliberations that occur during public meetings comply with due process requirements and result in a complete administrative record; and to preserve proper decorum preventing behavior that might lead to the perception that a public official is not fully engaged.

1. Use of Electronic Communications Devices to Send and Receive E-Mail and Text Messages by City Officials Participating in Public Meetings:

A city official participating in a public meeting shall not use an electronic communications device to communicate with another city official participating in the same public meeting, or any other person, with respect to matters that are the subject of the public meeting. While not strictly prohibited, use of an electronic communications device by a city official while participating in a public meeting to communicate with persons other than another city official participating in the same public meeting on matters that are not the subject of the public meeting is highly discouraged, except in emergency situations. Therefore, while participating in a public meeting, a city official may: (a) send or receive e-mail and text messages to and from family members or family caregivers where absolutely necessary for the care of that family member, in the reasonable discretion of the city official; and (b) send or receive e-mail and text messages that must be sent or received to address urgent business matters of the city official, that do not involve city business, in the reasonable discretion of the city official.

2. Public Records Act:

All city records whether paper or electronic are subject to the public disclosure requirements of the California Public Records Act ("PRA"). Therefore, any

information sent or received by city officials on either city-owned or personal electronic communications devices during public meetings, that pertains to city business and otherwise qualifies as a disclosable public record under the PRA will be subject to disclosure upon request.

3. Due Process:

The federal and California constitutional guarantees of due process require that all relevant evidence considered during hearings or deliberations that take place during public meetings on matters that involve protected rights such as land use applications and permit and license grants, denials, or revocations ("hearing"), be introduced into and made part of the public record. Therefore, any information sent or received by city officials on electronic communications devices prior to or during a hearing that the public official relies on in making his or her decision ("material information"), must be disclosed and made part of the public record. Public officials shall disclose material information prior to the close of the public hearing or public comment portion of the hearing, whenever practicable, and in every event, before any action is taken on the item at the hearing.