

When Decorum and Civility Do Not Work, Then What?

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Today's Agenda

- Start at the Top
- Examples of Issues Facing Elected
- Elected's role in Personnel Matters and Day-to-Day Operations
- Baseline Legal Knowledge
- Codes of Conduct
- Consequences for Violations



Decorum And Civility Start At The Top

- National media attention
- Governing body sets the example that employees should want to follow
- Leadership and ethics go hand-in-hand
- How to bring out the best in our elected officials

Issues:

An individual Council member has received a complaint of harassment directly from an employee against his supervisor, and the Council member promises the employee to immediately retain a costly outside investigator and makes specific, promised outcomes, including that the employee can rest assured, the Council member will make sure that the “harassing” supervisor is dealt with handily.

PROBLEM?



HYPOTHETICAL – What do you do?

City Council member received a social media post from an employee alleging disability discrimination against the Public Works Director.



Issues:

A Council member has started increasingly using social media and has taken a liking to the “like” function, and is citing First Amendment Free Speech Rights that allows her to communicate on an internet-based social media platform without violating the governing body legal principles. The problem is the “like” involves something another Council member posted on a matter within the Council’s jurisdiction.

PROBLEM? SERIAL MEETING?



HYPOTHETICAL –What do you do?

City Council member advised by City Attorney that the City Manager is accusing the Council member of retaliation based on free speech.



HYPOTHETICAL –What do you do?

City Council member advised by City Manager that department head is accusing Council member of bullying and abusive behavior based on a single email the Council member sent him.



HYPOTHETICAL –What do you do?

City Manager/department head have just been informed by Human Resources that an employee is accusing them of discrimination based on lawful off-duty use of cannabis.



Issues:

A Council member has involved herself directly in the job performance issues of an employee and wants copies of the employee's personnel file to review.

PROBLEM?



Issues:

A Council member has started going directly to staff with voluminous requests for information, resulting in extra work for staff, staff not being able to complete assigned job duties, overtime, and complaints from staff that they are uncomfortable.

PROBLEM?

Issues:

You are the lead negotiator for the City. You are just about to present your last, best, and final proposal, and your Mayor meets individually with the rep on the other side of the table and advises she can get more than the deal you are about to put on the table.

PROBLEM?



Issues:

- *At the dais, one of your Council members has started regularly elevating his voice, at times, described as yelling and even spitting, laced with a bit of profanity. The Council member asserts this is what he was elected to do – speak passionately on behalf of those who elected him, and he is exercising his free speech rights, which no one dare tread upon, and if you do, he will file an anti-slap motion.....*

Issues cont.:

...As a result, the neighboring Council member sitting next to him at the dais believes his conduct is a direct threat to her physical safety. She demands to have her seat moved away from him, a sergeant at arms present during every open and closed session, and that if he raises his voice again, she will call 911 and seek a temporary restraining order.

PROBLEM?



Rules Of The Road

- Governing body needs guidance and reminders on rules of the road
- If behaving badly, conduct must change
- If not, consequences showing City does not tolerate unacceptable conduct

Role in Personnel Matters

- City Council Member
- City Manager
- Department Head
- Supervisor
- Human Resources/Personnel

Role in Personnel Matters

Controlling Documents:

- Law – Statutes/Case Law
- Municipal Code
- Resolutions/Ordinances
- Personnel Rules/Regulations/Handbooks
- MOU
- Department Policies
- Codes of Conduct

Role in Personnel Matters

City Manager

- Day-to-Day Operations
- Personnel Issues

Role in Personnel Matters

City Council

- Stay out! If in = significant legal exposure.
- Stay within your legal lane:
 - Jurisdiction = City Manager/City Attorney
 - Do not act alone
 - Loss of legislative shield of immunity
 - Creates confusion – who is the boss? Slippery slope!
 - Creates legal liability for City and yourself individually

Role in Personnel Matters

City Council – Stay in Your Lane cont.

- Admissions against interest
- Jeopardize the integrity of the employee discipline-appeal process
- Undermine City's commend structure and hierarchy
- Invasion of Privacy
- Unfair Labor Practice Charge
- Retaliation
- Violation staff's free speech rights

Role in Personnel Matters

- Acting individually in labor relations:
 - Bad faith direct dealing
 - Bad faith by-passing designated lead negotiators - Employees have designated representatives, and they are not Council members
 - Undermining Council majority authority and direction
 - Undermining negotiator's credibility

Role in Personnel Matters

City Council cont.

- Act only on matters within jurisdiction;
- And only at duly convened meetings;
- And the voice of one gives way to the voice of the majority

Role in Personnel Matters

Ultimately, it is the City Manager, potentially in conjunction with Human Resources and/or Legal, who takes the lead and guides us through all personnel issues; let him lead and do not do anything that could be perceived as interference.



Baseline Legal Knowledge

- AB 1661 Mandated Training
- Harassment
- Discrimination
- Retaliation
- Protected classes/perceptions
- Bullying



Baseline Legal Knowledge

- AB 1234 - Mandated Ethics and Conflicts Training
 - Personal interests – financial, family
 - Disclosure, recusal, and disqualification issues
 - Bias and fair process
 - Incompatible offices

Baseline Legal Knowledge

- AB 1234 - Mandated Ethics and Conflicts Training cont.
 - Confidential information
 - Misuse of public funds
 - Campaign contributions
 - Travel, gifts, and bribery
 - Conduct upon leaving office
 - Transparency laws

Baseline Legal Knowledge

- Enter the Public!: Brown Act
- Open Meetings
- Requires public's business conducted in public
 - Narrow exceptions apply
- Overarching principles
 - Transparency in government
 - Public access/participation
 - Within Context of a "Business Meeting"

Baseline Legal Knowledge

- SB 1100
- Took effect January 1, 2023, which amended the Brown Act
- Provides local public agencies greater clarification about when it may remove a member of the public engaging in actually disruptive behavior during an open meeting
- Introduced in response to increase of disruptions at open meetings



Baseline Legal Knowledge

- ***DOES COUNCIL NEED TO MEMORIZE ALL THESE LAWS; no, however,....***



Codes Of Conduct

- Make clear to Council what is expected of them
- Remind them of these issues so they can follow up with City Manager/City Attorney with questions
- Review current code for updating or creating if do not have one

Codes Of Conduct

- Start with core concepts
- Civility encompasses more than just good manners and etiquette
- It includes the behavior that helps to preserve the norms for mutual respect at work
- Civility demands that one speaks in ways that are respectful, responsible, restrained and principled and avoid that which is offensive, rude, demeaning, and threatening

Codes Of Conduct

- **Format - Abbreviated:**

- Focus on issue spotting, high level
- Integrity, responsibility, fairness, accountability, professionalism, decorum, respect for elected or appointed officials, staff, and the public, and appropriate and efficient use of public resources; then generally statements about responsibilities of public office; dedicated service; conflicts

Codes Of Conduct

- Format cont.
 - More detailed
 - Examples provided of: Order and decorum; commitment to civility; appropriate use of electronic devices; confidential communications; ethics; conflicts of interest; governance standards (creating policies), which includes creating a positive governance culture and outlining norms, expectations, and Council member relationships with City Manager/Department heads

Codes Of Conduct

- Format cont.
 - More detailed cont.
 - *I am honest with my fellow elected, staff, and the public even when it involves speaking hard or unwelcome truths. I do not promise what I know is unrealistic; I am prepared to make unpopular decisions; I credit others' contributions; I do not accept gifts because of my public position; and I do not give special treatment to any person or group beyond that available to any other individual. I treat my fellow officials, staff, and public with patience, courtesy, and civility even when we disagree; I respect differences...*

Codes Of Conduct

- Format cont.
 - More detailed cont.
 - *While a Council member is speaking, members shall not interrupt, shall be respectful, and shall not engage in or entertain private discussions. Members are encouraged to use formal style, including appropriate titles, in addressing the public, staff, and each other. Members shall refrain from use of profanity, emotional outbursts, personal attacks or any speech or conduct that tends to bring the organization into disrepute. Members are to maintain a neutral tone of voice at all times*

Codes Of Conduct

- Format cont.
 - More detailed cont.
 - *Finally, and importantly, members are to refrain from being judgmental; assume that everyone is operating with the best of interests; and refrain from publically criticizing any City employee's performance*

Codes Of Conduct

- Process for updating/creating codes of conduct:
 - Check in with each elected official on format and what is included
 - No violating the Brown Act
 - Ad hoc committee
 - Open session presentation; review, revise, come back and adopt

Codes Of Conduct

- Regulations adopted by City re SB 1100
- “The council may establish rules for the conduct of its proceedings. It may punish a member or other person for disorderly behavior at a meeting.”
 - City of San Ramon Municipal Code A4-3(H)

Codes Of Conduct

“14. ORDER AND DECORUM.

(a) By Councilmembers. While the Council is in session, the members must preserve order and decorum, and a member shall neither by conversation or otherwise, delay or interrupt the proceedings of the peace of the Council nor disturb any member while speaking or refuse to obey the order of the Council or its Presiding Officer, except as otherwise herein provided.

(b) By Other Persons. Any person making personal, impertinent, or slanderous remarks or who shall become boisterous while addressing the Council or who shall by conversation or otherwise, delay or interrupt the proceedings or the peace of the Council or disturb any member while speaking or refuse to obey the orders of the Council or its Presiding Officer shall be forthwith barred by the Presiding Officer from further audience before the Council, unless permission to continue be granted by a majority vote of the Council. In the interest of an orderly meeting, applause and/or jeering shall not be permitted.

(c) Enforcement of Order and Decorum. A law enforcement officer may be designated as Sergeant-at-Arms of the Council meetings when requested by the Presiding Officer. The law enforcement officer shall carry out all orders and instructions given at the Council meeting. Upon instruction of the Presiding Officer, it shall be the duty of the Sergeant-at-Arms to remove any person who violates the order and decorum of a Council meeting. Violation of the order is a misdemeanor.”



Consequences For Violations

- Accountability if trainings and code are disregarded
- Codes should spell out process for complaints against an elected official
 - Examples: Referral to City Counsel for initial legal assessment; or referral to ad hoc committee
 - Fact-finding process
 - Referral to full Council

Consequences for Violations

- Public censure – What is it?
 - Formally adopt resolution of official reprimand of an elected
 - States strong disapproval of certain conduct
 - Why do it?
 - Shows Council and City do not impliedly condone bad behavior

Consequences For Violations

- Public Censure Resolution and/or Removal from Committees of City Council Member
 - What goes into open and what goes into closed sessions
 - Recusal
 - Due Process

Consequences for Violations

City Council cont.

- Quo Warrento
- Temporary restraining order
- Fair Political Practices Commission
- Grand Jury

Employees Emulate Good Behavior

- Code of Conduct process (either updating code or creating one) sends a strong message to entire agency
- Platform then to approach employees and bargaining groups to discuss City-wide updates to policies to conform with updated Council Code of Conduct

Closing

*Take the opportunity to lay a more civil foundation
at the City*



Questions?

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