

ORDINANCE NO. 3561

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
SECTIONS OF CHAPTER 2.04 (CITY COUNCIL MEETINGS)
OF THE CHULA VISTA MUNICIPAL CODE REGARDING
COMMUNICATION WITH COUNCIL AND DISRUPTIVE
CONDUCT DURING COUNCIL MEETINGS

WHEREAS, pursuant to Cal. Const. art. XI, § 7, the City of Chula Vista has the authority, under its police power, to enact regulations for the public peace, morals, and welfare of the City; and

WHEREAS, the City Council of the City of Chula Vista finds that the City Council has a legitimate need to conduct City business in an efficient, orderly manner and provide a forum for all persons to petition the government for redress of grievances; and

WHEREAS, the City Council of the City of Chula Vista finds that conduct by persons addressing the City Council during City Council meetings which interferes with, disrupts, disturbs, or otherwise impedes the orderly conduct of City Council meetings, prevents the City Council from conducting its business, and inhibits the ability of citizens to petition their government for the redress of grievances; and

WHEREAS, City Council meetings are limited public fora (*White v. Norwalk*, 900 F.2d 1421 (9th Cir. 1990)), and the City Council may adopt regulations related to conduct at meetings that are reasonable to the purpose of the forum and viewpoint neutral (*Norse v. City of Santa Cruz*, 629 F.3d 966 (9th Cir. 2010)); and

WHEREAS, applicable law, including Government Code section 54954.3, provides that the legislative body of a local agency may adopt regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker; and

WHEREAS, applicable law, including Government Code section 54957.95, authorizes an individual who engages in disruptive behavior at a meeting to be removed from such meeting; and

WHEREAS, prohibited conduct at City Council meetings must be limited to conduct that actually disrupts the orderly operation of such meetings (*Acosta v. City of Costa Mesa*, 718 F.3d 800 (9th Cir. 2013)).

NOW, THEREFORE, the City Council of the City of Chula Vista does ordain as follows:

Section I. Chapter 2.04 of the Chula Vista Municipal Code is amended as follows:

[sections 2.04.010 through 2.04.110 remain unchanged]

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2.04.120 Written comments.

A. *Regular Meetings.* Written comments received by or submitted electronically to the City prior to 12:00 noon on the day of each regular Council meeting shall be provided to the Council and incorporated into the record for the meeting.

B. *Special Meetings.* Written comments received by or submitted electronically to the City three hours prior to each special Council meeting shall be provided to the Council and incorporated into the record for the meeting.

C. *Comments delivered to City Council Meetings.* Notwithstanding the foregoing, written comments personally delivered to the City Clerk at the City Council meeting will be distributed to the City Council and incorporated into the record for the meeting until the close of public comment period on the item or under the general Public Comment period for non-agenda items.

[section 2.04.130 is repealed]

[section 2.04.140 remains unchanged]

2.04.150 Consent calendar.

The consent calendar shall consist of the approval of minutes of previous meetings and those other items such as contracts and routine resolutions that do not necessitate a separate public hearing and that are determined in the agenda preparation process to be relatively non-controversial. The consent calendar shall be considered as one item regardless of the number of matters appearing on it and may be approved by a single vote. The Mayor or any Councilmember may remove an item from the consent calendar; such item will then be heard as an action item.

[sections 2.04.160 through 2.04.200 remain unchanged]

2.04.210 Right to address the Council.

Section 309 of the Charter guarantees the right of citizens to present grievances at any regular meeting of the City Council; therefore, members of the public in attendance shall have the absolute right to address the Council as a whole during consideration of items, upon obtaining recognition by the presiding officer.

A. *Consent Calendar.* Members of the public shall be heard prior to Council consideration of the consent calendar. Each speaker shall be allowed up to three minutes to address the Council concerning any and all items on the consent calendar. The Mayor or any Councilmember may then briefly respond to the speaker, or request a response from a staff member, or request discussion of an item or items on the consent calendar. Such actions shall not operate to remove an item from the consent calendar.

B. *Agenda Items.* Members of the public wishing to speak on an agenda item not on the Consent Calendar shall be given the opportunity to speak for up to three minutes to address the Council concerning the agenda item. Members of the public do not have the right to comment outside the scope of or unrelated to the agenda item under consideration.

C. Non-Agenda Items/General Public Comments. There will be a total of 21 minutes scheduled and titled “Public Comments” on the agenda near the beginning of the Council Meeting for members of the public to address the Council. Each speaker shall be allowed up to three minutes to address the Council on items of interest to the public that are not on the agenda but are within the jurisdiction of the Council. In the event that more than seven individuals request to address the City Council on non-agenda items, the first seven will be heard near the beginning of the meeting. The remaining speakers will be heard near the conclusion of the meeting and granted up to three minutes each. In the event that all interested individuals present at the time address the City Council during the first Public Comment session, there will be no additional Public Comment session near the conclusion of the meeting. The presiding officer shall have the discretion to allow more than seven individuals to speak at the beginning of the session. An issue raised by a speaker may be referred to the City Manager. No other action may be taken by the Council at this time.

D. Time Limits for Speakers Who Utilize an Interpreter. A member of the public who utilizes an interpreter to provide consecutive English language translation shall receive twice the time otherwise allotted to speak.

E. Request to Speak. Any person wishing to speak to the Council must submit to the City Clerk a request to speak prior to the close of public comment period on the item or under the general Public Comment period for non-agenda items. Requests to speak received after the close of public comment on the item will not be accepted. No person may yield speaking time to another person. Any person who does not wish to speak to the Council but wishes to have the record reflect a position in favor of or in opposition to an agenda item may do so by indicating the same on the public comment form.

F. Group Presentations. Group presentations are not permitted on non-land use or non-adjudicatory matters.

G. Visual Presentations. The use of City equipment for visual presentations is not permitted on non-land use or non-adjudicatory matters. Documents may be submitted to the City Clerk to be provided to the Council and incorporated into the record for the meeting.

H. Land Use or Adjudicatory Matters. On land use or adjudicatory matters, project applicants or appellants, separate from public comments on the item, shall be allowed up to 15 minutes to address the Council on the matter. Project applicants or appellants that wish to show a presentation or video must make arrangements to submit the presentation to the City Clerk no later than 24 hours prior to the meeting. Project applicants or appellants are encouraged to be prepared with alternatives in the event that technical issues prevent visual presentations from being displayed on City equipment.

I. Signs. Signs and visuals may be held by members of the public, as long as they don't block the view of other meeting attendees or otherwise interrupt or disrupt the orderly conduct of the City Council meeting.

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J. Presiding Officer Authority. The presiding officer shall have the discretion to adjust provisions contained in this section, including speaker time limits, the number of speakers, and group presentation matters, subject to the right of any Councilmember to appeal to the Council.

[sections 2.04.220 through 2.04.250 are repealed]

[sections 2.04.260 through 2.04.320 remain unchanged]

2.04.330 Conduct during the Council Meeting.

A. Prohibition on Disorderly Behavior. Any person who engages in disorderly behavior that actually disrupts, disturbs or otherwise impedes the orderly conduct of any City Council meeting shall, upon an order by the presiding officer or a majority of the Council, be barred from further audience before the City Council during that meeting, pursuant to the provisions of section (C), below.

B. Disorderly Behavior Defined. Disorderly behavior under subdivision (A) may include, but is not limited to, the following:

1. Speaking without being recognized by the presiding officer.
2. Continuing to speak after the allotted time has expired or has been paused.
3. Speaking on an item at a time not designated for discussion by the public of that item.
4. Throwing objects.
5. Speaking on an issue that is not within the jurisdiction of the Council.
6. Attempting to engage the audience rather than the Council.
7. Addressing staff members or individual Councilmembers directly rather than the Council as a whole during the public comment period.
8. Refusing to modify conduct after being advised by the presiding officer that the conduct is disrupting the meeting or disobeying any other lawful order of the presiding officer or a majority of the Council.
9. Engaging in behavior that constitutes a use of force or a true threat of force.

C. Enforcement. The rules of conduct while addressing the Council set forth above shall be enforced in the following manner:

1. *Call to order and warning to desist.* Whenever practicable, the presiding officer or a majority of the Council shall give a warning to the person who is breaching the rules of conduct to be orderly and to comply with the rules of conduct hereunder. Such a warning shall articulate the rule of conduct being violated and the manner in which the person must comply.

A warning shall not be necessary when it would not be effective under the circumstances, including when, but not limited to, the disturbance is such that the warning cannot be heard above the noise, or the conduct of the person or persons constitutes an immediate threat to public safety, such as the throwing of objects or specific threats of harm and the apparent, present ability to carry out such threats. A warning shall also not be necessary when an individual violates the rules of conduct more than once during a Council meeting.

2. *Order barring person from meeting.* A person who engages in disorderly behavior shall be barred from the remainder of that City Council meeting by the presiding officer or a majority of the Council when that person: (i) continues the disorderly behavior after receiving a warning pursuant to subdivision (C)(1); (ii) ceases the disorderly behavior upon receiving a warning pursuant to subdivision (C)(1), but later in the same Council meeting resumes such disorderly behavior; or (iii) engages in disorderly behavior and no warning is practicable under the circumstances, pursuant to subdivision (C)(1).

The continuation of disorderly behavior after receiving a warning, repeated disorderly behavior during a City Council meeting, or disorderly behavior that is so significant that a warning cannot be given, constitutes the type of behavior that actually disrupts, disturbs or otherwise impedes the orderly conduct of a City Council meeting.

3. *Removal.* If the person barred from the meeting does not voluntarily remove him/herself upon being instructed to do so by the presiding officer or a majority of the Council, the presiding officer or the majority of the Council may direct the Chief of Police or person designated by Chief of Police to remove that person from the Council chambers.

(D) The following conduct is unlawful and shall be punishable as a misdemeanor:

1. Continuing to engage in disorderly conduct, which disrupts, disturbs or otherwise impedes the orderly conduct of any City Council meeting, after receiving a warning pursuant to subdivision (C)(1) of this section.

2. Refusing to leave a City Council meeting after being directed to do so pursuant to subdivision (C)(2) of this section.

3. Returning to a City Council meeting after being barred, removed or directed to leave such meeting pursuant to subdivisions (C)(2) and (C)(3) of this section.

[sections 2.04.350 to 2.04.590 remain unchanged]

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista

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hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

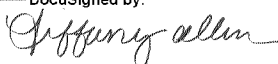
Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

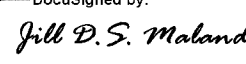
[SIGNATURES ON THE FOLLOWING PAGE]

Presented by

Approved as to form by

DocuSigned by:

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 Tiffany Allen
 Assistant City Manager

DocuSigned by:

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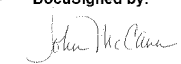
 Jill D.S. Maland
 Lounsbury Ferguson Altona & Peak
 Acting City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 9th day of January 2024, by the following vote:

AYES: Councilmembers: Cardenas, Chavez, Gonzalez, and Preciado

NAYS: Councilmembers: McCann

ABSENT: Councilmembers: None

DocuSigned by:

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 John McCann, Mayor

ATTEST:

DocuSigned by:

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 Kerry K. Bigelow, MMC, City Clerk

STATE OF CALIFORNIA)
 COUNTY OF SAN DIEGO)
 CITY OF CHULA VISTA)

I, Kerry K. Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3561 had its first reading at a regular meeting held on the 12th day of December 2023, and its second reading and adoption at a regular meeting of said City Council held on the 9th day of January 2024 and was duly published in summary form in accordance with the requirements of state law and the City Charter.

2/6/2024

 Dated

DocuSigned by:

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 Kerry K. Bigelow, MMC, City Clerk