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M E M O R A N D U M

DATE: April 15, 2024
TO: Mayor Pachota and City Council Members
CC: Ed Lavallee, City Manager
Kelly Michaels, City Clerk
FROM: Kelly M. Fernandez, City Attorney
SUBJECT: Public Comment Regulations

The City Attorney and City Clerk have identified some Code provisions and practices related to public comment that merit discussion and potential revision. As background, Section 286.0114, Florida Statutes, provides the public a right to be heard before official action is taken on an item. Subsection (2) states:

Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or

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proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

Thus, only one opportunity to be heard during the decisionmaking process (not each time an item is discussed) is required. In addition, public comment needs to be allowed before the decision but not necessarily during the agenda item. It is also important to keep in mind that public comment may be submitted in writing and, if not a quasi-judicial matter, any member of the public can speak directly to a Council Member about a potential action or proposition at any time.

The City Attorney's Office and City Clerk's Office have the following suggestions for Council consideration:

1) **Allow public comment only during general audience participation (held at the beginning and the end of the meeting) and during public hearings.** This would eliminate public comment during agenda items that are not public hearings and resolve an inconsistency in the City Code. Public hearings are required for agenda items involving ordinances, certain land use petitions, and the relinquishment of a property interest. The Code could be revised as follows:

Section 2-53(a)

(3) *Audience participation.* The council will hear comments, concerns or questions from members of the public present at the meeting during defined time periods for public comment on the agenda. Any person wishing to speak shall complete and submit a request to speak card prior to the start of the applicable opportunity for public comment. Any single presentation must be limited to five minutes for city residents, city property owners, and owners of businesses within the city limits and two minutes for all other speakers unless other time limits are established. ~~Comments will be permitted on agenda items at the time the item is under consideration by the council if a request to speak card has been submitted to the city clerk.~~

(4) *Addressing council.* Each person addressing council shall speak into the microphone and shall limit his address to the time granted by subsection (a)(3) above. The time limits will be strictly enforced. Time limits for any member of the public may be extended at the discretion of the presiding officer. All remarks shall be addressed to the council as a body and not to any member thereof. There is to be no interruption during the presentation; however, at its completion, any councilmember may, through the chair, ask questions with the intent of receiving pertinent information but will not enter into a debate. The person will then be dismissed. Then council may open the question for their discussion. In all areas other than public hearings or audience participation, the audience will not be allowed to speak, unless it is approved by four affirmative votes of council.

2) **Limit the ability to speak during public comment for someone else (outside of being a designated representative) to only those people with legal authority to speak for someone (i.e., an attorney representing a client or someone holding a power of attorney).** The Council has previously allowed a person with just written authorization to speak for someone else, without using their own speaking time. This clarification would not prohibit someone from using their own time to share someone else's comments as they can use their time however they choose. It is recommended to include this clarification in the Code. Otherwise, only an adjustment to the request to speak wording is necessary.

3) **Eliminate the ability for a Council Member to open a discussion during general audience participation.** This is consistent with current Council practice and is a best practice. A Council Member wishing to address something said during public comment can do so during their own comment period at the end of the meeting or by requesting an item to be on a future agenda. The Code could be revised as follows:

(4) *Addressing council.* Each person addressing council shall speak into the microphone and shall limit his address to the time granted by subsection (a)(3) above. The time limits will be strictly enforced. Time limits for any member of the public may be extended at the discretion of the presiding officer. All remarks shall be addressed to the council as a body and not to any member thereof. There is to be no interruption during the presentation; however, at its completion, any councilmember may, through the chair, ask questions with the intent of receiving pertinent information but will not enter into a debate. The person will then be dismissed. ~~Then council may open the question for their discussion.~~ In all areas other than public hearings or audience participation, the audience will not be allowed to speak, unless it is approved by four affirmative votes of council.

4) **Eliminate references in the Code to a speaker card and instead use the term “request to speak”.** This modification addresses the City's migration from the use of a paper card to a kiosk and other electronic means.

Requested Action: Direct the City Attorney to draft an ordinance revising public comment as contained in this memorandum.