



**CITY OF LODI  
COUNCIL COMMUNICATION**

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**AGENDA TITLE:** Introduce Ordinance Amending Lodi Municipal Code Chapter 2.04 – City Council Meetings, by Repealing and Reenacting Sections 2.04.130 “Addressing the Council” and 2.04.150 “Decorum” in their Entirety

**MEETING DATE:** October 2, 2013

**PREPARED BY:** City Attorney’s Office

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**RECOMMENDED ACTION:** Introduce Ordinance amending Lodi Municipal Code Chapter 2.04 – City Council Meetings, by repealing and reenacting Sections 2.04.130 “Addressing the Council” and 2.04.150 “Decorum” in their entirety.

**BACKGROUND INFORMATION:** The Municipal Code has long required citizens addressing the City Council to identify themselves by name and address before addressing the Council (Lodi Municipal Code Section 2.04.130). The code has not been enforced for many years as a result of case law that found similar provisions to violate the First Amendment. These draft revisions will conform our Municipal Code to our practice.

Recent case law has also preempted our current Municipal Code requirements to address the Council. Section 2.04.130 prohibits making personal, impertinent or slanderous remarks or who becomes boisterous during the council meeting. Although the Council does have the power consistent with the First Amendment to maintain order during a council meeting, the Ninth Circuit has concluded that the above speech is protected unless it actually disturbs the conduct of a council meeting. (*Acosta v. City of Costa Mesa*) These changes conform our code to the Ninth Circuit’s requirements while maintaining Council’s ability to maintain order.

Staff recommends that the City Council introduce the ordinance repealing and reenacting the referenced Municipal Code sections.

**FISCAL IMPACT:** N/A

**FUNDING:** N/A

A handwritten signature in black ink, appearing to read "Stephen Schwabauer".

Stephen Schwabauer  
City Attorney

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**APPROVED:**

A handwritten signature in black ink, appearing to read "Konrad Bartlam".

Konrad Bartlam, City Manager

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE LODI CITY COUNCIL AMENDING  
LODI MUNICIPAL CODE CHAPTER 2.04 – CITY COUNCIL  
MEETINGS – BY REPEALING AND REENACTING  
SECTIONS 2.04.130 “ADDRESSING THE COUNCIL” AND  
2.04.150 “DECORUM” IN THEIR ENTIRETY

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BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Lodi Municipal Code Section 2.04.130 “Addressing the Council” is hereby repealed and reenacted to read as follows:

2.04.130 - Addressing the Council.

- A. Any interested person may, subject to the rules of procedure adopted hereunder, speak on any item coming before the council. It shall not be required that persons wishing to speak give prior written notice, but priority shall be given to those who have so notified the city clerk in advance.
- B. After a motion is made and seconded, no person shall address the city council without first securing permission of the council to do so.
- C. Remarks by the public shall be made only from the podium. Speakers shall be requested but not required to first give their names and addresses for the record, ~~and no~~ one shall be permitted to enter into any discussion without permission of the presiding officer.

SECTION 2. Lodi Municipal Code Section 2.04.150 “Addressing the Council” is hereby repealed and reenacted to read as follows:

2.04.150 - Decorum.

- A. Council Members. 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 or the peace of the council nor disturb any member while speaking or refuse to obey the orders of the council or its presiding officer, except as otherwise provided by this chapter. Any member who, after warning by the chair, repeatedly violates these rules may be ejected for the remainder of the meeting by two-thirds vote of the council.
- B. Other Persons. Any person making personal, impertinent or slanderous remarks or who becomes boisterous during the council meeting who utters language or engages in conduct that disrupts, disturbs or otherwise impedes the orderly conduct of any council meeting shall be forthwith, by the presiding officer, barred from further audience at the meeting before the council, unless permission to continue is granted by a majority vote of the council.
- C. Any violation of this section may be punished as an infraction pursuant to Section 1.08.010 of this code.

SECTION 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability. If any provision of this ordinance or the application thereof to any person

or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 5. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 6. This ordinance shall be published pursuant to law and shall become effective 30 days from the date of passage and adoption.

Approved this \_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
ALAN NAKANISHI  
MAYOR

ATTEST:

RANDI JOHL-OLSON  
City Clerk

State of California  
County of San Joaquin, ss.

I, Randi Johl-Olson, City Clerk of the City of Lodi, do hereby certify that Ordinance No. \_\_\_\_ was introduced at a regular meeting of the City Council of the City of Lodi held October 2, 2013, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held \_\_\_\_\_, 2013, by the following vote:

AYES: COUNCIL MEMBERS –  
NOES: COUNCIL MEMBERS –  
ABSENT: COUNCIL MEMBERS –  
ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. \_\_\_\_ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL-OLSON  
City Clerk

Approved to Form:

D. STEPHEN SCHWABAUER  
City Attorney