



December 22, 2023

VIA ELECTRONIC MAIL

Thomas R. Hatch
Interim City Manager
City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92701
Email: thatch@santa-ana.org

Re: Policy on "Filming, photography and recording at City of Santa Ana public meetings"

Dear Interim City Manager Thomas Hatch:

The First Amendment Coalition, joined by the organizations listed below, write to protest the city's policy on "Filming, photography and recording City of Santa Ana public meeting," a copy of which is attached for reference and which has been distributed by staff and referenced by city leaders at recent City Council meetings.

The policy violates the Ralph M. Brown Act and threatens the ability of the press to exercise editorial discretion in covering public meetings. We urge you to immediately withdraw the policy and commit to adhering to the Brown Act and respecting press rights.

The relevant portion of the Brown Act is clear:

Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

Govt. Code § 54953.5(a). The Act thus guarantees the right to record city council meetings unless the city council makes a reasonable finding that the recording cannot continue without persistent disruption of the meeting. A minimal or fleeting disruption is not sufficient.

As a threshold matter, we understand the policy is not based on any findings by the city council or any applicable legislative body that the equipment or activities covered by the policy would constitute a persistent disruption. Even if the council or other body had made such findings, they would be unreasonable, for the following reasons.

Media areas: The policy improperly restricts the use of equipment such as “[t]ripods, video cameras, [or] cameras with zoom lenses” to “designated media areas ... at the back of the room” merely on the assertion that such “equipment could block attendees’ view of the proceedings or disrupt the meeting” (emphasis added). Regardless of whether all such equipment is properly characterized as “large,” the standard for which is potentially ambiguous, it cannot be taken as given that the mere use of such equipment would necessarily constitute a persistent disruption of the proceedings in all circumstances.

This also raises constitutional concerns because it appears to be targeted at the press specifically, referring to “media areas,” “members of the media,” and a possible “media/press pool.” Members of the press have the same right as any member of the public to attend these public meetings and cannot be restricted from recording unless the council makes a finding that such a recording is causing a persistent disruption.

Filming in specific places: The policy categorically prohibits any “filming, photography and other forms of recording,” no matter how brief or transitory “in aisles, in front of the dais, in front of doors/entrances/emergency exits, and at any other locations that may impede the movement of meeting attendees.” Although we appreciate concerns for safety, this provision violates the Brown Act by going far beyond persistent disruption or genuine risks to safety. As worded, it would prohibit a meeting attendee from recording audio or video or snapping a photo while entering or leaving the meeting room, moving to and from a seat, using an aisle, or standing at the podium while addressing members of the city council sitting on the dais. There is no reasonable likelihood that such recording would cause persistent disruption of the meeting or present any genuine safety concerns, which are presumably addressed by existing fire or other relevant safety codes.

Filming/photography while seated: This provision states that attendees “using small cameras, smartphones, or similar devices that do not block other attendees’ views of the proceedings may photograph or film public meetings while seated in the audience.” This is unnecessary, as the Brown Act already guarantees the right to record in a way that does not constitute a persistent disruption of the proceedings.

Disruptive activity: This section asserts that any “action or activity that disrupts the conduct of meetings” or impedes the ability “to see, hear, film or participate in the proceedings will be deemed disruptive” and constitute cause for removal, regardless of how brief, fleeting, or transitory the alleged disruption might be. This provision violates the Brown Act because it does not require persistent disruption. An entire class of recording activities cannot be declared categorically disruptive in advance of actual or reasonable likelihood of persistent disruption.

This section further violates the Brown Act by unilaterally authorizing the chair or an officer representing the chair to take action against persons recording the meeting. Under the Act, only the “legislative body” as a whole has the power to take such action. Govt. Code § 54953.5(a).

For all of the reasons above, the city must rescind this policy and issue a public statement confirming the policy is not in effect. We urge the city of Santa Ana to follow the Brown Act and respect press freedom.

Thank you for your attention to this matter. I am happy to discuss the above with you.

Very truly yours,

FIRST AMENDMENT COALITION



David Loy
Legal Director

JOINED BY:

INDUSTRIAL WORKERS OF THE WORLD FREELANCE JOURNALISTS UNION
LOS ANGELES PRESS CLUB
LOS ANGELES CHAPTER OF THE SOCIETY OF PROFESSIONAL JOURNALISTS
ORANGE COUNTY PRESS CLUB
VOICE OF ORANGE COUNTY

cc: Mayor Valerie Amezcua
Mayor Pro Tem Jessie Lopez
Councilmember Thai Viet Phan
Councilmember Vazquez
Councilmember Phil Bacerra
Councilmember Johnathan Ryan Hernandez
Councilmember David Penaloza
Public Affairs Officer Paul Eakins
City Attorney Sonia R. Carvalho



Filming, photography and recording at City of Santa Ana public meetings

The filming, photographing or audio recording of the City of Santa Ana's public meetings in the City Council Chamber at 22 Civic Center Plaza, including meetings of the Santa Ana City Council, Committees, Boards, and Commissions, is allowed as follows, unless otherwise permitted by the meeting chair:

Media areas: Tripods, video cameras, cameras with zoom lenses, and any other large equipment that could block attendees' view of the proceedings or otherwise disrupt the meeting may only be used in the designated media areas that are marked with red tape at the back of the room.

If the designated space does not accommodate the number of requests for recording/photography access, members of the media will be encouraged to use video footage from the City's YouTube channel or record from the screen in the overflow area. Alternately, the City may require a media/press pool to allow a limited number of news media representatives access.

**To ensure the safety of all meeting attendees, filming, photography and other forms of recording IS PROHIBITED in aisles, in front of the dais, in front of doors/entrances/emergency exits, and at any other locations that may impede the movement of meeting attendees.*

Filming/photography while seated: Attendees using small cameras, smartphones, or similar devices that do not block other attendees' views of the proceedings may photograph or film public meetings while seated in the audience.

Disruptive activity: Any action or activity that disrupts the conduct of meetings or impedes other members of the public from being able to see, hear, film or participate in the proceedings will be deemed disruptive. Anyone who is deemed to be causing disruptive activity may be asked to leave the meeting.

Examples of disruptive activity include:

- bulky cameras/recording devices blocking/interfering with the audience's view of the proceedings;
- excessive noise in recording, setting up or re-siting equipment during the meeting;
- ongoing, audible commentary as a recording is undertaken;
- asking for people to repeat statements for the purposes of recording;
- use of lighting and use of flash photography;

The chair of the meeting – or any officer representing the chair – has the authority to stop a meeting and take appropriate action if any person is deemed to be filming, photographing or recording in a disruptive manner.

This guidance on the filming, photographing and broadcasting of meetings is to be posted and made available to members of the news media and the general public at meetings in the City Council Chamber.

Questions?

Please contact the City Manager's Office at 714-647-5200 during regular business hours.