

MEMORANDUM

Office of the City Manager



DATE: January 29, 2021

TO: Mayor and Council

FROM: Steve McHarris, City Manager *Steve McHarris*
Chris Diaz, City Attorney

SUBJECT: Public Comments during City Council Meetings

Background:

Since early 2020 the COVID-19 pandemic has impacted City operations in various ways. The City of Milpitas declared a local emergency on March 12, Santa Clara County issued a stay-at-home order effective March 17 and the State issued a similar order on March 19. Milpitas was the first city in the County to shift to a virtual format for its Council meetings, with the first virtual meeting held on March 17, 2020. Since then, all City Council, Council Subcommittee, Commission, and Task Force meetings have been held virtually through the Zoom platform.

Because of the pandemic regulations, all public entities shifted to a virtual platform within a few weeks of the stay-at-home order, with the majority using zoom for their meetings. On March 17, 2020, the Governor issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings completely telephonically or by other electronic means including Zoom. At the onset, many entities encountered situations commonly known as “zoom bombings” wherein members of the public shared inappropriate verbal and visual content during public comment.

The City of Milpitas took this into consideration and put in place several measures to avoid these situations. One of them was to create a comment form for each agenda item, where a member of the public could submit a comment via the form during the meeting. These comments were then read aloud by the City Clerk during the public comment period for that item. For public hearing items, especially where there was high community interest, the City also offered the public to submit audio messages and video files. Additionally, similar to the practices prior to the pandemic, the public could also submit emails in advance of the meeting. These emails were included in the Council agenda packets.

As the pandemic continued, Zoom continued to strengthen its security measures and the City was able to transition to a different format for public comments on October 6, 2020. Any member of the public wishing to participate is required to register in advance and is then allowed to join the meeting as an attendee. There are still security measures in place that do not allow the public to share their screen or video, but they can speak when it is their turn to comment.

Between June and August 2020, comments submitted via the public comment form contained language that many members of the Council and public felt were inappropriate. Members of the City Council have raised concerns about this and on January 5, 2021, the Mayor asked, with City Council support, that staff look into these comments.

Analysis:

Staff from the Information Technology department have looked at the public comment forms; however, they are not able to discern the identity of the commenters. This is because the Internet Protocol (IP) addresses belong to the Internet Service Provider (ISP) and the City does not have access to this information.

The City, through the Police department, is only able to obtain subscriber information from an Internet Service Provider (ISP) through the issuance of a search warrant, by a magistrate. The California Penal Code states: "to obtain a search warrant for subscriber information, the police department must show a provider of electronic communication service or remote computing service has records or evidence showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom that person may have delivered them for the purpose of concealing them or preventing their discovery". Since the public comments under discussion do not meet these criteria the Police department cannot obtain a search warrant for the subscriber information.

Considerations

In order to perform any additional work on this, it would require the City to hire a third party to examine the documents. Staff has completed preliminary research and identified a potential investigator. Costs are estimated to be \$100 per hour, preliminary consultant work is estimated to cost approximately \$1,000; total consultant costs and staff time will be determined based on initial findings. If any Councilmember would like this additional work to proceed, that Councilmember may request placement of this item on a future Council agenda for consideration by the full Council.