



DATE: March 19, 2019

TO: Mayor and Council

FROM: City Manager

SUBJECT: Adoption of Proposed Revisions to the Council Member Handbook Section on “Order of Business related to Council Reports, Referrals and Future Agenda Items”

RECOMMENDATION

That the Council discusses the current procedure for Council Referrals, the proposed revisions to the Council Handbook section on “Order of Business related to Council Reports, Referrals, and Future Agenda Items,” and adopts the resolution (Attachment II) accepting the recommended changes for inclusion in the Council Member Handbook.

SUMMARY

The Council Member Handbook¹ was adopted in July 1983 and provides procedural rules for how the Council will operate. The Council has expressed a desire to review the current procedure and consider modifications to the “Order of Business related to Council Reports, Referrals, and Future Agenda Items,” section of the Council Member Handbook to provide further clarification. This report presents proposed modifications for Council discussion and adoption.

BACKGROUND

The Council Member Handbook (Handbook) provides procedural rules for how the City Council will operate as a body. The Handbook was adopted in July 1983 and since then, has gone through various revisions over the years as needed. The last revision was completed in 2017 (Attachment III).

At the February 3, 2019 Council Governance Retreat, the Council reviewed the Table of Contents of the Handbook and discussed various sections they would like to review for possible modifications. It was determined at that Council retreat, that a Council ad hoc committee would be established by the Mayor to review, modify, and/or update the various sections of the Handbook discussed. On February 28, 2019, the Mayor created the Council Ad

¹ **Council Member Handbook:** <https://www.hayward-ca.gov/sites/default/files/FINALCouncil%20Member%20Handbook2017.pdf>

Hoc Committee on the Council Handbook comprised of Council Members Mendall, Márquez, and Mayor Halliday.

Council also asked staff to review the Handbook for items that needed to be updated to reflect current practices and to make the document gender neutral by referring to positions vs. use of s/he/they pronouns. Over the last several weeks, some Council Members expressed an interest in reviewing the Council Referral process as soon as possible given perceived concerns about the Brown Act and also to clarify this process. The adoption of the proposed modifications to the Council Referrals section of the Handbook is before the Council and is the focus of this staff report instead of review and discussion by the Ad Hoc Committee given these recent concerns.

A total of eighteen (18) municipalities in California were surveyed regarding their current process for Council Members to refer items to the Council for consideration and ultimately to staff for further research and work. Clarification of this process is crucial to ensure an appropriate balance of staff workloads and existing Council priorities and to ensure compliance with the City Charter Section 705, which describes the roles of the City Council and City Manager as they relate to the administrative service of the City:

...Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately. The City Manager shall take his orders and instructions from the City Council only when it is sitting in a lawfully held meeting².

Of the eighteen (18) municipalities surveyed:

- Eight (8) have a process similar to Hayward that allows members of the Council to consider items not on the agenda during a section of the Council agenda. Items raised by individual Council Members require the consensus of the majority of the Council before directing staff to provide information, perform studies, or add items to an upcoming Council or Committee agenda;
- One (1) municipality allows individual Council Members to refer items to staff, provided there is a consensus of the majority of the Council. If the item is referred to staff, the item is placed on a future Council meeting;
- Six (6) municipalities have a process by which Council Members wishing to bring forward a topic for Council consideration are required to write a brief memo/ report that is added to the agenda. The Council does not take action on the night that a Council memo/ report is introduced unless the title and recommendation satisfy the Brown Act and there are no resource or staff implications;
- One (1) municipality has a process by which agenda items and requests are submitted to the Rules and Legislative Committee, consisting of four Council Members, City Attorney, City Administrator, and City Clerk's designee, for review and referral to staff, City Council, or subject-matter committee;

² City Charter: https://library.municode.com/ca/hayward/codes/charter?nodeId=CIHACH_S705NTEADSE

- One (1) municipality has a process by which agenda items, including those submitted by any Council Member, are subject to review by an Agenda Committee consisting of the Mayor and two members of the Council, where the Agenda Committee has the authority to place items on the agenda according to a process in place; and
- One (1) municipality has a process by which individual Council Members contact the City Manager’s office directly with any requests.

The review of the eighteen (18) municipalities’ sections on agenda titles varied and include titles such as: “Items Referred by Council”; “Council Member Comments”; “Council Referrals”; “Matters Initiated by Council Members”; “Future Agenda Item Requests from Council Members”; “Council Requests to Schedule Agenda Items”; “Procedures for Bringing Matters Before City Council”; “Agenda Items Originated by Councilmembers”; “Matters Initiated by Council”; “Items Referred by Council”; “Council Referrals”; “Council Matters”; “Matters of Council Interest/Clarification”; and “Council and Mayor Statements.”

DISCUSSION

At the retreat and on other occasions since the retreat, including at the February 26, 2019 Council meeting, some Council Members expressed an interest in discussing, reviewing, and modifying the Council Referrals procedure outlined under the “Council Reports, Referrals, and Future Agenda Items” section of the Handbook to further clarify:

- How Council Members can add items to future agendas;
- How the “majority” of Council accepts a Council referral at the time of the request; and
- Once Council agrees to place an item on the agenda, clarity about when the Council can expect the referral to be placed on a future Council agenda.

The focus of this staff report is to present proposed revisions to the Handbook section on “Order of Business related to Council Reports, Referrals, and Future Agenda Items,” related to Council Referrals for Council discussion and adoption.

The current language in the Handbook related to Council referrals can be found on page 23 of the Handbook in Attachment III and is listed below for reference.

Current Procedure:

Council Reports, Referrals and Future Agenda Items:

During the Council Reports, Referrals, and Future Agenda Items section of the agenda, a Council Member may request an item be considered on a future agenda, and upon agreement of a majority of Council, staff will prepare a report if formal Council action is required. Council Members may make this request verbally during a meeting or may submit it in writing.

Proposed Procedure:

Staff proposes to separate the current section, “Council Reports, Referrals and Future Agenda Items” into two separate sections: 1) Council Reports and 2) Council Referrals.

Council Reports

The “Council Reports” section would allow Council Members to report on attendance at intergovernmental agency meetings, conferences, seminars, or other Council events and to comply with AB 1234 requirements (reimbursable expenses for official activities). This proposed section would be placed after the “Public Comments” section of the agenda.

The proposed “Council Reports” section would read as follows:

“Council Members can provide oral reports on attendance at intergovernmental agency meetings, conferences, seminars, or other Council events and to comply with AB 1234 requirements (reimbursable expenses for official activities).”

Council Referrals

The “Council Referrals” section would allow Council Members to request Council consideration of items to be added to future agendas or other referrals.

The proposed “Council Referrals” section would read as follows:

“Any Council Member may bring forward a Council Referral Memorandum (Memo) on any topic to be considered by the entire Council. The intent of this Council Referrals section of the Council Handbook is to provide an orderly means through which an individual Council Member can raise an issue for discussion and possible direction by the Council to the City Manager and City staff.

The process to make a Council Referral has two parts. The first part is to enable the Council Member to place a matter before the Council. The second part is to enable the Council to determine whether staff time should be spent on the issue.

Part 1: Council Members wishing to refer a matter to the City Council for discussion will:

- A. Prior to preparing a Council Referral Memo, Council Members can consult with the City Manager to determine whether the issue can be addressed as part of the City Manager’s operational authority, does not require policy direction from the Council, and is within current budgeted resources.
- B. In advance of a Council meeting, the referring Council Member will submit a Council Referral Memo (not to exceed two pages) describing the Referral (Attachment IV – Sample Council Referral Memo). The Council Referral Memo can outline the policy issue, overall outcome or desired objective, desired timeline, identification of key stakeholder groups that might need to be

consulted, and/or other pertinent information that will clarify for Council the policy issue desired for Council discussion.

- C. The Referring Council Member will notify the City Manager, or the City Manager's designee, via telephone, email, or in person and convey that the Council Member has a Council Referral Memo to place on the agenda and the desired Council meeting date, at least two weeks prior to the desired Council meeting. This will give the City Clerk time to finalize the agenda and post it within the required timeframe. Requests received after this two-week deadline will be placed on the agenda for the following regularly-scheduled Council meeting.

Staff will not devote time preparing reports or analysis on the requested item. The limited staff assistance provided, at this initial stage of the Council referral, would be to help the Council Member clarify and/or frame the issue, if needed, so that the Council and public clearly understand the request.

- D. In consideration of staff capacity, the need to balance other City business, and with the potential of up to 35 referrals a year (*7 Council Members X up to 5 Referrals a Year = 35*), each Council Member can make (*3-5 referrals a year – this limit can be discussed by Council but staff recommends no more than 5 referrals per member per year*). In the event any Council Member desires to make more than five referrals per year, Council Members can discuss these at the annual Council Prioritization Retreat or can ask one of their colleagues to bring forward a referral (in compliance with the Brown Act).

Part 2: Council Consideration of the Council Referral Memo:

- A. When the item is called at the Council meeting, the Referring Council Member who made the request will describe the policy issue the Council Member wishes to place on a future agenda.
- B. The Council discussion will be limited to determining whether staff time and City resources should be devoted to researching the particular agenda item and whether to direct staff to conduct further analysis on the item. Council will not take action on the agenda item itself. Concurrence that staff time and City resources will be devoted to the item does not signify approval of the item. It only indicates that the Council wishes to have the item studied further. Additionally, the Council may, at any time, decide to drop the matter, even after the matter has been analyzed by staff.
- C. Upon the concurrence of a majority of the Council that the item should be researched and placed on a future Council agenda, the City Manager will determine when to place the item on a future agenda based on time necessary to complete the research and staff workload considerations. The City Manager

will maintain a log of such referrals, the date of the referrals, and the projected dates the referred matter will be agendized for further consideration.”

The proposed modifications to the, “Council Reports, Referrals and Future Agenda Items” section of the Handbook outlined above considers Council’s desire for flexibility and further clarity on how Council Members can add items to future agendas, as well as considerations for the amount of staff resources that may be needed on researching and analyzing the item(s). (Exhibit A to Attachment II represents the redlined version of the proposed changes to the Handbook).

ECONOMIC IMPACT

There is no anticipated economic impact with the discussion of this report.

FISCAL IMPACT

There is no fiscal impact with the discussion of this report.

STRATEGIC INITIATIVES

The agenda item is a routine operational item and does not relate to one of the Council’s Strategic Initiatives.

NEXT STEPS

Upon Council adoption, these modifications will be incorporated into the “Council Reports, Referrals and Future Agenda Items” section of the Handbook and will be put into practice effective immediately.

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Approved by:



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