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A tied City Council keeps Zoom comments alive in Orinda

By Sora O'Doherty

Owing to the excused absence of Council Member Janet Riley, the Orinda City Council split two to two on a vote to prohibit public comments at City Council meetings to be made via the Zoom meeting platform. Because the vote was tied, the measure failed to pass and as a result public comments via Zoom will continue to be allowed during city council meetings.

City staff had asked the council to modify their meeting protocol in order to disallow public comments to be made via Zoom during council meetings in an effort to avoid episodes of "Zoombombing" that have been experienced in other jurisdictions, including some Contra Costa cities such as Lafayette. The Zoom platform has permitted individuals, often anonymously, to interject comments of an obscene, hateful or derogatory nature into public meetings.

City Attorney Osa Wolff explained to the council that their meetings are considered under the law to be limited public forums. Wolff said that the council cannot prohibit critical speech, or even obscenity or profanity, unless it reaches certain thresholds. While there are limits to freedom of speech, for example speakers cannot encourage violence or disrupt a meeting, she pointed out that "often very shocking speech is so hateful that it is difficult to make a decision in real time." Mayor Inga Miller agreed that it puts a heavy burden on staff to identify it correctly when it is occurring in real time.

In the long discussion that followed, there was some confusion as to what the council was being asked to vote on. Council members discussed ceasing to use Zoom at all, while staff was only asking that comments during meetings not be allowed to be made on Zoom. Comments would continue to be available in person, in writing, and via email.

The ability to make comments during public meetings via Zoom has led to instances of what has become known as "Zoombombing," in which a speaker, sometimes anonymously, makes remarks of an obscene or defamatory nature, including hate speech, that may not even be related to anything on the meeting agenda. Such speakers may not be local, in fact may not even be residents of the same city, state or country as the meeting venue.

Nevertheless, council members Brandyn Iverson and Latika Malkani felt that they would prefer to honor the principle of freedom of speech over protecting the council and its audience from negative comments. Seven written comments were submitted in response to the proposed ban on Zoom comments. The written comments came from Charles Porges, Joel Libove, Steve Cohn, Leslie Hudak, Charles Brotman, Kathleen Robertson and Kathleen Finch.

All seven comments were against the action. The comments mentioned that Orinda has not yet been subjected to a Zoombombing incident, but City Manager David Biggs said that staff was trying to be proactive, and that of the jurisdictions that have been Zoombombed, many did introduce a ban thereafter. He noted that other jurisdictions within Contra Costa County have been subjected to hateful comments via Zoom.

In terms of how much a potential ban on Zoom comments would affect the number of comments received by the council, City Clerk Sheri Smith reported that an informal survey she conducted, the city had four Zoom comments over the last five months, or 10 meetings. Miller reported that at the Mayor's conference, about half of Contra Costa jurisdictions reportedly have discontinued or never offered the ability to comment via Zoom.

Vice Mayor Darlene Gee concluded that although the city had given Zoom comments a fair trial after returning to in-person meetings, it was hardly used. Miller said that one of the reasons she was willing to go down this path was because of the support of staff. Adding that she had had a lot of reservations, she could see that comments from outside Orinda, outside the state of California, even from outside the country could be seen as taking time away from the management of the city.

With Council Member Janet Riley not present to vote, the final vote was 2-2. Wolff noted that procedurally, because the vote was tied, the measure failed.

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[back](#)

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