



City of Carson Report to Mayor and City Council

October 1, 2013
New Business Discussion

SUBJECT: CONSIDER THE REPORT ON OPTIONS AVAILABLE TO THE CITY COUNCIL GOVERNING TIME, PLACE AND MANNER PROTOCOLS FOR ORAL COMMUNICATIONS FROM THE PUBLIC ON AGENDA AND NON-AGENDA ITEMS AT CITY COUNCIL MEETINGS

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City Attorney

Approved by Jacquelyn Acosta
Acting City Manager

I. SUMMARY

This item is on the agenda at the request of Councilmember Robles.

The Office of the City Attorney was requested to research the legal requirements regarding, and to provide a written report on, the law governing oral communications by members of the public at City Council meetings. We were then requested to present to the City Council for its consideration various options regarding time, place, and manner protocols for affording oral communications at the City Council meetings.

The request included conducting a sample survey of other city protocols.

II. RECOMMENDATION

CONSIDER and provide DIRECTION.

III. ALTERNATIVES

1. SELECT from Option 1 through Option 4, as described in this Report, and DIRECT the Office of the City Attorney to prepare the necessary legislative amendments to City Council resolutions and/or the Municipal Code to implement the same.
2. TAKE any other action the City Council deems appropriate that is consistent with the requirements of law.
3. RECEIVE and FILE this report.

IV. BACKGROUND

1. Public Comment Requirements of State Law

The Ralph M. Brown Act (“Brown Act”) requires that “[e]very agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body . . . before *or* during the legislative body’s consideration of the item” (Gov. Code § 54954.3(a); emphasis added.)

The Brown Act further provides that, “[t]he legislative body of a local agency *may adopt reasonable regulations* to ensure that the intent of [the above requirement] is carried out, *including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.* (Gov. Code § 54954.3(b); emphasis added.)

The courts of appeal as well as the Attorney General have interpreted these provisions to afford legislative bodies flexibility in how regulate the time, place and manner of entertaining comments from members of the public on agenda items and non-agenda matters, so long as a public comment period is provided, to ensure that the legislative body is able to complete its agenda in a timely manner. (*Chaffee v. San Francisco Public Library Comm’n* (2005) 134 Cal.App.4th 109, 116; *Chaffee v. San Francisco Library Comm’n* (2004) 115 Cal.App.4th 461 (2004); 75 Ops.Cal.Atty.Gen. 89 (1992).)

The courts have found that the when the public is afforded a right to comment such speech is protected by the First Amendment to the United States Constitution. (*White v. City of Norwalk* (1990) 900 F.2d 1421, 1425.) As this court has explained,

Citizens have an enormous first amendment interest in directing speech about public issues to those who govern their city. It is doubtless partly for this reason that such meetings, once opened, have been regarded as public forums”

(*White*, 900 F.2d at 1425; *see also Kindt v. Santa Monica Rent Control Bd.* (1995) 67 F.3d 266, 270-71.)

However, even with the protections granted First Amendment (meaning members of the public are free to criticize elected or appointed public officials, public services, and public actions, up to the point of making or repeating

otherwise defamatory statements), the courts recognize that city council meetings are primarily “business meeting” and only a limited public forum is afforded to the public to provide comments.

This phrase “limited public forum” is a legal term of art meaning that the First Amendment protections afforded public speakers at city council meetings are subject to reasonable limitations. The courts have upheld limitations imposed on the time any speaker is allowed to speak (ranging from 2 to 10 minutes per speaker).

The courts have also approved reasonable limitations as to the manner of providing public comments (there is no right to rebuttal by member of public [except in the context of sworn public testimony in which the applicant is afforded the “last word”], there is no right to speak on matters not within the subject matter jurisdiction of the city council, there is no right to engage in a dialogue/debate between a member of the public and members of the city council).

Lastly, the courts have upheld reasonable limitations on the scope of public participation in council meetings (there is no right to “pull” items off the consent calendar, there is no right to demand when on the agenda members of the public speak or in what order they speak, there is no right to repeat comments the substance of which has been already made by other speakers, and there is no right to disrupt council meetings).

These same courts have repeatedly held that the First Amendment is *not violated* when a city council limits comments to the subjects either on an agenda or within the jurisdiction of the city council, prohibits irrelevant and/or repetitious comments, limits disruptive speech that prevents a council from accomplishing its business in a reasonably efficient manner, and imposes reasonable time limitations on individual speakers and/or on the total time afforded for public comments.

2. Public Comment Practices

In surveying other cities, it became clear that city council’s across the state have taken advantage of the flexibility provided in the law in fashioning time, place and manner protocols on public comment periods at their meetings. The following is a sample summary of the public comment procedures of eight California cities we surveyed.

a. Anaheim

Anaheim has a public comment period at the beginning of its council meeting. Members of the public can speak up to three (3) minutes on any agenda or non-agenda item. There is no time limit on this public comment period.

The Council does not open up the agenda items for separate or additional public comment. All public comment on agenda and non-agenda items is entertained at the beginning of the council meeting.

For public hearings, the City has specific time limits depending on the status of the speaker. Interested parties (*e.g.*, those within a noticed area for a rezoning) have up to five (5) minutes to speak. Project applicants or issue initiators have up to twenty (20) minutes for initial presentation and ten (10) minutes for rebuttal.

Anaheim does not have a second public comment period at the end of the meeting.

b. Arcata

We found one city that provides for a unique method of affording public comments – all public comment is provided through on-line or social media methods of communication, subject to a certain character length. The public comment period opens at noon on the Friday before the council meeting and closes at 9:00 a.m. the day of the council meeting.

According to the city’s website, the benefits of the “Public e-Comments” program are to (i) help focus citizen comments to items currently on the agenda, (ii) provide a convenient means for citizen input for those who find it difficult to attend a meeting, and (iii) encourage more informed comments by providing a one-stop shop for viewing background information on agenda items (staff reports), (iv) provides a means for increased civic engagement, (v) reaches all five councilmembers, (vi) provides all councilmembers an easy to read, organized report prior to the meeting.

c. Compton

Compton has a public comment period at the beginning of its council meeting. Members of the public who signed up for comments by 4:45 p.m. on the day of a council meeting are afforded three (3) minutes to speak during the public comment period. There is no limit on this public comment period.

The Council does not open up the agenda items for separate public comment. All public comment on agenda and non-agenda items are entertained at the beginning of the council meeting.

Any member of the public can speak at a public hearing item for up to two (2) minutes. There is no time limit on the public hearing comment period.

Compton does not have a second public comment period at the end of the meeting.

d. Cypress

Cypress has a public comment period at the beginning of its council meetings. Members of the public are afforded three (3) minutes to speak and the public comment period is limited to a total of thirty (30) minutes.

During this period, public comments on all agenda items (except matters where sworn testimony is required) as well as non-agenda items are entertained, with the admonition that public comments on agenda items will be entertained first and general oral communications entertained thereafter (time permitting).

For public hearing items, where sworn testimony is required, public comment is limited to ten (10) minutes per speaker and there is no time limit on the public hearing testimony period.

At the end of the council meeting there is a second public comment period. Members of the public are afforded five (5) minutes to speak. There is no time limit on this public comment period, and members of the public wishing to speak on non-agenda items are encouraged to speak during this second comment period.

e. Long Beach

Long Beach has a public comment period at the beginning of its council meetings. The first ten (10) people that sign up (starting at 4:45 p.m.) may speak for three (3) minutes at this public comment period.

The Council opens every agenda item up for public comment. Members of the public may speak for up to three (3) minutes on agenda items. There is no time limit on the public comment period on the agenda items, although the Mayor has

authority to ask people to shorten comments to one (1) or two (2) minutes if there are a large number of people wanting to speak on an item or if the comments are repetitious.

The city has a second public comment period at the end of the meeting, no speaker cards are required. Members of the public can speak for up to three (3) minutes during this second public comment period. There is no time limit on the second public comment period.

f. Torrance

Torrance has a public comment period at the beginning of its council meeting. Members of the public can speak on any agenda or non-agenda item for up to three (3) minutes. This public comment period is limited to thirty (30) minutes.

The council opens every agenda item up for public comment. Member of the public can speak up to three (3) minutes on each agenda item, unless they already spoke on the agenda item during the public comment period at the beginning of the council meeting.

At the end of the meeting, there is a second public comment period. Members of the public are given three (3) minutes to speak on any item within the subject matter jurisdiction of the city council. For this comment period, the Mayor may limit comments to two (2) minutes if there is a large of speakers.

g. Redondo Beach

Redondo Beach has a public comment period at the beginning of its council meeting. Members of the public are afforded three (3) minutes to speak on non-agenda items. There is no limit on the time allowed for this public comment period.

The Council opens every agenda item up for public comment. Members of the public are allowed to comment for up to three (3) minutes per each item.

The City does not have a second public comment period at the end of the meeting.

h. Santa Monica

Santa Monica does not have a public comment period at the beginning of its council meeting.

The Council opens every agenda item up for public comment. Members of the public may speak for up to two (2) minutes. There is no time limit on the public comment period for agenda items.

Individual speakers are limited to a total of six (6) minutes of comments per council meeting. So, for example, a person may speak on three agenda items for two minutes each, six agenda items for one minute each, etc. The presiding officer may grant additional time to an individual speaker by majority vote of the city council.

The city has a public comment period at the end of the meeting. Members of the public can speak up to two (2) minutes on non-agenda items. There is no time limit on this public comment period, although the individual speaker limits apply to this public comment period.

The above is summarized in the following table:

	BEGINNING	AGENDA ITEMS	END
CYPRESS	Yes 30 min max 3 min/speaker	Public Hearing Items 10 min/speaker	Yes 5 min/speaker
TORRANCE	Yes 30 min max 3 min/speaker	All 3 min/speaker	Yes 3 min/speaker
REDONDO BEACH	Yes 3 min/speaker	All 3 min/speaker	No
COMPTON	Yes 3 min/speaker (signed up at 4:45pm)	Public Hearing Items 2 min/speaker	No

LONG BEACH	Yes 3 min/speaker (first 10 people sign up at 4:45)	All 3 min/speaker	Yes 3 min/speaker
SANTA MONICA	No	All 2 min/speaker	Yes 2 min/speaker
	Individual speaker limits of 6 min/meeting		
ANAHEIM	Yes 3 min/speaker	Public Hearing Items 20 min/applicant 5 min/noticed pty 3 min/public 5 min/all on legislative items	No

3. Options

We are of the considered legal opinion that each of the various time, place, and manner protocols adopted by the cities we surveyed would meet the requirements of the Brown Act, and each are legally defensible under the current statutes and case law.

Therefore, the City Council is free to consider these options, direct us to expand our survey, and/or select a public comment protocol that best encourages public participation, allowing the public to participate in the decision-making process, while at the same time ensuring the City Council is able to perform the public’s business and complete its agendas in an efficient manner.

From our review of the various time, place and manner public comment protocols we have surveyed to date, we suggest that the City Council consider one of the following four (4) options (if the Council is of a mind to change is current protocol):

Option 1 – Anaheim Model

- One Public Comment Period at Beginning (unlimited time, 2 or 3 min/speaker)

- Public Hearings Only (3 min/speaker, unless the speaker is the applicant, then up to 5 min/applicant with a right to rebuttal)

Option 2 – Santa Monica Model

- One Public Comment Period at End (unlimited time, 2 or 3 min/speaker)
- All Agenda Items (2 min/speaker)

Option 3 – Cypress Model

- Public Comment Period at Beginning (30 to 45 minutes, 3 min/speaker)
- Public Hearings Only (3 to 10 min/speaker)
- Second Public Comment at End (unlimited time, 5 min/speaker)

Option 4 – Torrance Model

- Public Comment Period at Beginning (30 minutes, 3 min/speaker)
- All Agenda Items (3 min/speaker)
- Second Public Comment at End (unlimited, 3 min/speaker)

V. FISCAL IMPACT

None is anticipated.

VI. EXHIBITS

None.

Prepared by: William W. Wynder, City Attorney

TO:Rev06-19-2013

Reviewed by:

City Clerk	City Treasurer
Administrative Services	Public Works
Community Development	Community Services

Action taken by City Council	
Date _____	Action _____