



# City of Carson Report to Mayor and City Council

October 15, 2013  
New Business Discussion

**SUBJECT: CONSIDER RESOLUTION NO. 13-101 AMENDING RESOLUTION NO. 13-029 REGARDING THE ORDER OF PROCEEDINGS BEFORE THE CITY COUNCIL, AND ADOPTING TIME, PLACE, AND MANNER PROTOCOLS FOR ORAL COMMUNICATIONS DURING THE MEETINGS OF THE CARSON CITY COUNCIL, AS AUTHORIZED BY CARSON MUNICIPAL CODE § 2405**

Submitted by William W. Wynder  
City Attorney

Approved by Jacquelyn Acosta  
Acting City Manager

## **I. SUMMARY**

At its City Council meeting of October 1, 2013, the City Council directed the preparation of the necessary legislation to adopt modified time, place, and manner protocols for receiving and entertaining oral communications and public testimony at its meetings and those of its constituent or subsidiary bodies.

The attached resolution complies with the Council's directive and is available for consideration and possible adoption at the discretion of the City Council.

## **II. RECOMMENDATION**

WAIVE further reading and ADOPT Resolution No. 13-101, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING RESOLUTION NO. 13-029 REGARDING THE ORDER OF PROCEEDINGS BEFORE THE CITY COUNCIL, AND ADOPTING TIME, PLACE, AND MANNER PROTOCOLS FOR ORAL COMMUNICATIONS DURING THE MEETINGS OF THE CARSON CITY COUNCIL, AS AUTHORIZED BY CARSON MUNICIPAL CODE § 2405."

## **III. ALTERNATIVES**

1. TAKE any other action the City Council deems appropriate that is consistent with the requirements of law.
2. RECEIVE and FILE this report.

#### IV. BACKGROUND

##### A. The Governing 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 to 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 by the 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 members of the 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, and 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, in what order members of the public are allowed to 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 the 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.

**B. Proposed Time, Place & Manner Protocols for Oral Communications.**

The attached resolution would adopt the following time, place, and manner protocols for oral communications. There will be three periods for oral communications before the City Council, or any of its constituent or subsidiary bodies:

1. First Period for Oral Communications Following Introductions and Any Special Presentations. The attached resolution would provide for a 40 minute period of oral communications on any item on the agenda (excluding public hearings) and/or on any matter not on the agenda within the subject matter jurisdiction of the applicable legislative body, unless extended by the Mayor with the approval of the entire City Council. Speakers will be afforded three minutes each, speaking once.

The resolution will amend the agenda face to read as follows:

“The public may at this time address the members of the City Council/Housing Authority/Successor Agency on any matters within the jurisdiction of the City Council/Housing Authority/Successor Agency and/or on any items on the agenda of the City Council/Housing Authority/Successor Agency, prior to any action taken on the agenda. No action may be taken on non-agendized items except as authorized by law. Speakers are requested to limit their comments to no more than three minutes each, speaking once. If you would like to address the City Council/Housing Authority/Successor Agency, please complete the SPEAKER’S CARD. The card is available at the speaker’s podium or from the City Clerk. Please identify on the card your name, address, and the item on which you would like to speak, and return to the City Clerk. The SPEAKER’S CARD, though not required in order to speak, assists the Mayor in ensuring that all persons wishing to address the City Council/Housing Authority/Successor Agency are recognized, time permitting. Oral communications will be limited to 40 minutes unless extended by order of the Mayor/Chair with the approval of the City Council/Housing Authority/Successor Agency.”

During the first oral communications, members of the public will be advised that they should speak on agenda items and/or non-agendized items. *There will no longer be individual oral communications on individual agenda items (except for public hearings).*

2. Public Testimony on Matters Requiring a Public Hearing. Where City Council practice or state law requires the holding of a public hearing, members of the public and the applicant will be afforded an opportunity to provide

testimony, under oath, on each public hearing agenda item. Speakers will be limited to three minutes, speaking once, except the applicant who will be afforded the opportunity to provide a final rebuttal, if desired.

The resolution will amend the agenda face to read as follows:

“Public testimony is restricted to three minutes per speaker, speaking once (excepting applicants who are afforded a right of rebuttal, if desired), unless extended by order of the Mayor with the approval of the City Council.”

3. Second Period for Oral Communications Following Ordinance Second Readings. There will be a concluding period of oral communications for members of the public following the second reading of ordinances. During this second period of oral communications, members of the public will be afforded five minutes, speaking once, to address the City Council/ Housing Authority/Successor Agency on any matter within the subject matter jurisdiction of the appropriate legislative body. This period of oral communications will be without a time limit unless shortened by order of the Mayor with the approval of the City Council.

The resolution will amend the agenda face to read as follows:

“The public may at this time address the members of the City Council/Housing Authority/Successor Agency on any matters within the jurisdiction of the City Council/Housing Authority/Successor Agency. No action may be taken on non-agendized items except as authorized by law. Speakers are requested to limit their comments to no more than five minutes each, speaking once.”

It is the considered opinion of the Office of the City Attorney that Resolution No. 13-101 meets the requirements of the Brown Act while at the same time allowing the City Council to conduct its important business in an appropriately time efficient manner. The resolution is available for consideration and adoption at the discretion of the City Council.

In addition, as an educational outreach to the members of the public, attached is a handout that our office would recommend that the City Council approve for placement in the Helen Kawagoe Council Chambers and on the City's website to

assist members of the public in understanding the time, place, and manner protocols set forth in the resolution.

**V. FISCAL IMPACT**

None is anticipated.

**VI. EXHIBITS**

1. Resolution No. 13-101. (pgs. 7-10 )
2. Oral Communications Handout. (pg. 11)

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

<b>Action taken by City Council</b>	
Date _____	Action _____

RESOLUTION NO. 13-101

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING RESOLUTION NO. 13-029 REGARDING THE ORDER OF PROCEEDINGS BEFORE THE CITY COUNCIL, AND ADOPTING TIME, PLACE, AND MANNER PROTOCOLS FOR ORAL COMMUNICATIONS DURING THE MEETINGS OF THE CARSON CITY COUNCIL, AS AUTHORIZED BY CARSON MUNICIPAL CODE § 2405

WHEREAS, Carson Municipal Code § 2405(a) provides that the City Council shall, at its regular or special meetings, take up the business of the Council "for consideration and disposition in the order established by resolution of the City Council, unless such order or category is otherwise ordered by the Mayor with the approval of the entire Council;" and

WHEREAS, the City Council now desires to amend Resolution No. 13-029, in part, to set forth time, place and manner protocols for receiving and entertaining oral communications and public testimony for the meetings of the City Council and those of its constituent or subsidiary bodies.

NOW, THEREFORE, be it RESOLVED by the CITY COUNCIL of the CITY OF CARSON, CALIFORNIA, as follows (new text, if any, in ***bold & italics***; deleted text, in any, in ~~strikethrough~~):

**Section 1.** Pursuant to Carson Municipal Code § 2405(a), the following shall be the order of business to be followed for meetings of the City Council and those of its constituent or subsidiary bodies, unless such order is modified by the Mayor with the approval of the ~~entire~~ City Council (including the Mayor) present at a regular or special meeting.

- A. The Mayor, or in his absence the Mayor Pro Tempore, shall take the chair precisely at 5:00 p.m. (or as soon thereafter as a quorum can be assembled), and shall immediately call the Council to order at the commencement of a Regular or Special Meeting – Closed Session(s)
  - (a) Call to Order
  - (b) Roll Call to determine attendance
  - (c) Announcement of Closed Session Items (as necessary)
  - (d) Recess into Closed Session (as necessary)
  - (e) Reconvene to Open Session (as necessary)
  - (f) Report of Closed Session Actions (as necessary)
- B. The Mayor, or in his absence the Mayor Pro Tempore, shall take the chair precisely at 6:00 p.m. (or as soon thereafter as a quorum can be assembled), and shall immediately call the Council to order at the

[MORE]

EXHIBIT NO. 1



commencement of a Regular or Special Meeting -- Commencement of Regular Business Session(s).

- (a) Flag Salute
- (b) Invocation
- (c) Approval of Minutes
- (d) Introductions & Special Presentations
- (e) Consideration of requests to re-order agenda item(s)
- (f) Oral Communications

***The public may address the members of the City Council/Housing Authority/Successor Agency on any matters within the jurisdiction of the City Council/Housing Authority/Successor Agency or on any items on the agenda of the City Council/Housing Authority/Successor Agency, prior to any action taken on the agenda. Speakers are limited to no more than three minute, speaking once. Oral communications will be limited to 40 minutes unless extended by order of the Mayor with the approval of the City Council.***

- (g) New Business Consent
- (h) Demands
- (i) Special Orders of the Day (Public Hearings)

***Public testimony is restricted to three minutes per speaker (excepting applicants who are afforded a right of rebuttal, if desired), unless extended by order of the Mayor with the approval of the City Council.***

- (j) Unfinished Business
- (k) New Business Discussion
- (l) Ordinance(s) Second Reading
- (m) Oral Communications

***The public may address the members of the City Council/Housing Authority/Successor Agency on any matters within the jurisdiction of the City Council/Housing Authority/Successor Agency. No action may be taken on non-agendized items except as authorized by law. Speakers are limited to no more than five minutes, speaking once. Oral communications will be unlimited unless shortened by order of the Mayor with the approval of the City Council.***

- (1) Councilmembers requests to add items to future agendas
- (2) Staff
- (3) Council Members

- (n) Announcement of Unfinished or Continued Closed Session Items (as necessary)
- (o) Recess to Closed Session (as necessary)
- (p) Reconvene to Open Session (as necessary)
- (q) Report of Actions on Unfinished or Continued Closed Session Items (as necessary)
- (r) Adjournment of all legislative bodies for which an agenda has been prepared

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**Section 2. Additions to the Agenda Face.** *There shall be added to agenda face of each City Council agenda, and those of its constituent or subsidiary bodies, the following:*

*(a) The text following heading on the agenda face that reads: “ORAL COMMUNICATIONS – MEMBERS OF THE PUBLIC (LIMITED TO 40 MINUTES)” shall be amended by inserting the following text in the place and stead of the existing text:*

*“The public may at this time address the members of the City Council/Housing Authority/Successor Agency on any matters within the jurisdiction of the City Council/Housing Authority/Successor Agency and/or on any items on the agenda of the City Council/Housing Authority/Successor Agency, prior to any action taken on the agenda. No action may be taken on non-agendized items except as authorized by law. Speakers are requested to limit their comments to no more than three minutes each, speaking once. If you would like to address the City Council/Housing Authority/Successor Agency, please complete the SPEAKER’S CARD. The card is available at the speaker’s podium or from the City Clerk. Please identify on the card your name, address, and the item on which you would like to speak, and return to the City Clerk. The SPEAKER’S CARD, though not required in order to speak, assists the Mayor in ensuring that all persons wishing to address the City Council/Housing Authority/Successor Agency are recognized, time permitting. Oral communications will be limited to 40 minutes unless extended by order of the Mayor/Chair with the approval of the City Council/Housing Authority/Successor Agency.”*

*(b) The text following heading on the agenda face that reads: “SPECIAL ORDERS OF THE DAY” shall be amended by inserting the following text:*

*“Public testimony is restricted to three minutes per speaker, speaking once (excepting applicants who are afforded a right of rebuttal, if desired), unless extended by order of the Mayor with the approval of the City Council.”*

*(c) The text following heading on the agenda face that reads: “CONCLUDING ORAL COMMUNICATIONS (MEMBERS OF THE PUBLIC)” shall be amended by inserting the following text:*

*“The public may at this time address the members of the City Council/Housing Authority/Successor Agency on any matters within the jurisdiction of the City Council/Housing Authority/Successor Agency. No action may be taken on non-agendized items except as authorized by law. Speakers are requested to limit their comments to no more than five minutes each, speaking once.”*

**Section 3. Ceremonial Presentations & Proclamations.** Ceremonial proclamations and resolutions to recognize events or activities of community wide interest shall not be presented at regular meetings of the City Council but shall be presented only at such set meeting(s) of the City Council set forth by this Resolution as follows: The first Monday after the first Tuesday of the month at 6:00 p.m., if needed.

**PASSED, APPROVED and ADOPTED** this 15th day of October, 2013.

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Mayor Jim Dear

ATTEST:

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Donesia L. Gause, CMC

APPROVED AS TO FORM:

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City Attorney

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## ORAL COMMUNICATIONS

Members of the public are welcome and invited to address the City Council, or any of its constituent or subsidiary bodies, on any item on the agenda or within the subject matter jurisdiction of the legislative body.

Depending on what items are on the agenda, there are **three (3) times when you may speak** to the City Council.

The **first period of oral communications** occurs early on in the meeting following introductions and any special presentations. This first period of oral communications is **limited to 40 minutes** in total, unless extended, and you are invited to speak for up to **3 minutes on any item on the agenda or non-agendized items, speaking once.**

Priority will be afforded to members of the public wishing to speak on agenda items. To assist the Mayor in knowing which agenda item you wish to speak on, you are invited to fill out a speaker's card and indicate which agenda item(s) you wish to speak on.

There are times when the City Council, or any of its constituent or subsidiary bodies, holds what is known as a **public hearing** on agenda items. During these agenda items members of the public will be placed under oath and invited to speak for **3 minutes per agenda item, speaking once.** To assist the Mayor in knowing which public hearing agenda item you wish to speak on, you are invited to fill out a speaker's card and indicate which agenda item(s) you wish to speak on.

The **second period of oral communications** occurs following the second reading of ordinances. This second period of oral communications is unlimited, unless shortened, and you are invited to speak for up to **5 minutes on any matter within the jurisdiction of the City Council, speaking once.**

