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MEMORANDUM OF LAW

DATE: December 2, 2014

TO: Honorable Council President and Councilmembers

FROM: City Attorney

SUBJECT: Limiting Non-Agenda Public Comment to Two Minutes Per Speaker

INTRODUCTION

On November 19, 2014, the Committee on Economic Development and Intergovernmental Relations approved proposed changes to non-agenda public comment at Council meetings. In general, the changes provide an increased opportunity for the public to address the Council on non-agenda items. However, the changes include reducing the time for each individual speaker from three minutes to two minutes.¹ This memorandum addresses whether the Brown Act permits the Council to limit speakers to two minutes for comments on items that are not on the agenda.

QUESTION PRESENTED

May the Council limit non-agenda public comment to two minutes per speaker?

SHORT ANSWER

The Brown Act requires that Council agendas provide an opportunity for the public to directly address the Council on items within its subject matter jurisdiction. The Brown Act does not specify any particular time period for public comments. Instead, it allows the Council to adopt “reasonable” regulations for comments including limiting the amount of time allocated for each individual speaker. The Council has wide discretion to establish reasonable regulations so long as the discretion is exercised reasonably and not in an arbitrary or capricious manner.

¹ The proposal does not change the three-minute time period for public comment on agenda items.

ANALYSIS

The Brown Act generally requires that legislative bodies conduct their meetings and deliberations in public. Cal. Gov't Code §§ 54950 through 54963.² Members of the public have the right to participate in the meeting by addressing the legislative body on any item of interest within its subject matter jurisdiction. This right includes the opportunity to comment on: (i) items on the agenda; and (ii) any item not on the agenda that is within the subject matter jurisdiction of the body, commonly referred to as “non-agenda public comment.” This right is described in section 54954.3(a) which provides, in pertinent part, as follows:

(a) Every agenda for regular meetings *shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public*, before or during the legislative body's consideration of the item, that is *within the subject matter jurisdiction of the legislative body*. . . .

§ 54954.3(a) (emphasis added.)

The Brown Act does not specify a minimum or maximum time limit for the public to address the legislative body. Instead, the Act allows the legislative body to adopt “reasonable” regulations limiting the amount of time allocated for public testimony on particular issues and for each individual speaker.

The legislative body of a local agency *may adopt reasonable regulations to ensure that the intent of subdivision (a) 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.

§ 54954(b) (emphasis added.)

Legislative bodies have wide discretion to adopt rules governing the conduct of their meetings so long as such discretion is exercised reasonably and not in an arbitrary or capricious manner. *See, Nevens v. City of China*, 233 Cal. App. 2d 775, 778 (1965). The California Attorney General has advised: “[s]o long as the body acts fairly with respect to the interest of the public and competing factions, it has great discretion in regulating the time and manner, as distinguished from the content, of testimony by interested members of the public.” *The Brown Act: Open Meetings for Local Legislative Bodies*, at p. 19 (California Attorney General, 2003).

In a 1992 opinion, the California Attorney General concluded that a legislative body may limit public testimony on particular issues to “five minutes or less” for each speaker. The opinion explains that a legislative body must be able to control the time allocated for each matter in order to complete its agenda:

² All statutory references are to the Government Code unless otherwise noted.

With respect to the agenda of a public agency meeting, a single item or several items may not reasonably be permitted to monopolize the time necessary to consider all agenda items. If the legislative body is to complete its agenda, it must control the time allocated to particular matters. This is precisely what the Legislature has recognized in subdivision (b) of section 54954.3, authorizing the adoption of “reasonable regulations.”

75 Op. Cal. Att’y Gen. 89 (1992).

The court in *Chaffee v. San Francisco Public Library Commission*, 134 Cal. App. 4th 109 (2005) reviewed a challenge to a two-minute time limit for comments on agenda items. The court upheld the decision of the chair of the San Francisco Library Commission to limit comment to two minutes even though the rule allowed “up to three minutes.” The chair explained that he limits comments when necessary to allow the Commission to complete its agenda within a reasonable period of time, or before an anticipated loss of a quorum. In finding that the two-minute limit did not violate the Brown Act, the court noted: “[t]he Brown Act does not specify a three-minute time period for comments, and does not prohibit public entities from limiting the comment period in the reasonable exercise of their discretion.” *Chaffee*, 134 Cal. App. 4th at 116.

The proposed change would reduce non-agenda public comment at Council meetings from three minutes to two minutes per speaker. The proposal follows a review of other large municipalities such as San Jose, Sacramento, and Los Angeles that limit non-agenda public comment to two minutes. The County of San Diego also has a two-minute limit for non-agenda speakers.³ Many smaller municipalities in San Diego have a three-minute limit for non-agenda comment, however smaller municipalities often have fewer Council meetings and agenda items.

In setting a time limit for public comment, the Council should ensure the limit is fair and reasonable. Some of the reasons for the change are described in the Report to the City Council dated November 12, 2014 which states: “the proposed changes are intended to create more opportunities, as well as a time efficient process for the public to address the Council on items not listed on the agenda.” A court will uphold the Council’s discretion as long as the time limit for non-agenda comment is found to be reasonable.

³ Rule 4(f) of the County Board of Supervisors Rules of Procedure states: “At each regular meeting there will be a total of ten (10) minutes scheduled at the beginning of the meeting for members of the public to address the Board, each speaker to be allowed no more than two minutes, on any subject matter within the jurisdiction of the Board and which is not an item on the agenda for that meeting. Each speaker must file with the Clerk a written Public Communication Request to Speak form prior to the scheduled opening time of the meeting. In the event that more than five (5) individuals request to address the Board, the first five (5) will be heard at the beginning of the meeting. The remaining speakers will be heard at the conclusion of the meeting and granted two (2) minutes each. . . .”

CONCLUSION

The Brown Act authorizes the City to adopt reasonable regulations for non-agenda public comment including regulations limiting the amount of time for each individual speaker. The Council has wide discretion to establish regulations but they must be reasonable and not arbitrary or capricious. To ensure members of the public have the full two minutes, we recommend that additional time be given if language translation is required or if speakers are interrupted. Finally, we recommend continuing the practice of allowing speakers to submit their comments in writing if they wish to more fully describe their concerns.

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By /s/Catherine M. Bradley
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