

MEMORANDUM OF LAW

DATE: December 12, 1994

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: "Duplicative" Public Comment at Regular and Special Council Meetings

By memorandum dated August 1, 1994, you asked the City Attorney whether the Chair of the City Council must allow a public comment at a meeting of the full City Council, if a member of the public has presented the same public comment at a previous Council Committee meeting. If so, you asked whether the San Diego Municipal Code could be revised to eliminate or reduce "duplicative" public comment.

To answer these questions, it is necessary to examine both the Ralph M. Brown Act, contained in Government Code sections 54950-54962, and the Council Rules, contained in San Diego Municipal Code ("SDMC") section 22.0101. Both bodies of law contain requirements pertaining to public comments at open meetings of the City Council. These laws will be addressed separately below.

APPLICATION OF RALPH M. BROWN ACT
TO "DUPLICATIVE" PUBLIC COMMENT

Under the Ralph M. Brown Act as amended April 1, 1994 ("Act"), the public is guaranteed the right to comment at any regular or special meeting on any subject which will be considered by a legislative body before or during its consideration of an item.F

The exact statutory language as pertains to regular meetings reads in relevant part as follows: "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" The exact statutory language as pertains to special meetings reads in relevant part as follows: "Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the

meeting before or during consideration of that item." Cal. Gov't Code ' 54954.3(a).

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In addition, the public has the right at every regular meeting to provide comment on any matter under the legislative body's jurisdiction. Cal. Gov't Code Section 54954.3(a). In essence, the Act distinguishes between two types of public comment: 1) comment about a particular item on an agenda, and (2) comment on some matter that is within the jurisdiction of the legislative body, but not about any particular item on an agenda. For purposes of this memorandum, the first type of comment will be called "particular comment" or "particular public comment," and the second type will be called "general comment" or "general public comment."

There is a noteworthy exception in the Act to the right of "particular public comment." The exception limits the right of "particular public comment" on an item that has already been considered by a committee, if:

- (1) that committee is composed exclusively of members of the legislative body; and,
- (2) the item was considered at a meeting that was public; and,
- (3) all interested members of the public at that prior committee meeting had an opportunity to comment on the item before or during the committee's consideration of the item; and,
- (4) the item has not substantially changed since the committee heard the item, as determined by the legislative body.

Although the statute is not clear on this point, this exception apparently exists only for items that are on the agenda for a regular meeting, not a special meeting, of the legislative body. It is also not available to limit the right of "general public comment." In other words, a person could make a comment on some matter within the jurisdiction of the legislative body's subcommittee, and then turn around and make that same "general comment" at a meeting of the full legislative body.

Applying the Act to "duplicative" public comments at meetings of the San Diego City Council, without for the moment considering the effect of the Council Rules, we find as follows: For regular Council meetings, the Council could prohibit "duplicative" public comment on a particular item if public comment were first heard on that same item at a prior Council Committee meeting (for example, at a meeting of the newly renamed Council Committee on Rules, Finance and Intergovernmental Relations), since that Committee is composed exclusively of

members of the Council, and if:

- (1) the item was considered by the Committee at a public (open) meeting; and,
- (2) all interested members of the public at the prior Committee meeting had an opportunity to comment on the item before or during the Committee's consideration of the item; and,
- (3) the item had not substantially changed since the Committee heard the item, as determined by the City Council.

This option will not be available for special meetings of the City Council. In practice, however, the lack of that option may not be a problem since special meetings are usually limited in scope and the issues taken up at special meetings most often are not heard at a prior Council Committee meeting. This option will also not be available to limit "general public comment." Under the Act, a person is entitled to make a comment on a matter at a Council Committee meeting and then make that same comment at a meeting of the full Council, as long as the comment pertains to a matter within the jurisdiction of the City Council and the particular Council Committee.

Despite the limitations imposed by the Act, the City Council is permitted to "adopt reasonable regulations" to ensure that the right of public comment 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." Cal. Gov't Code Section 54953.3(b).

APPLICATION OF COUNCIL RULES TO "DUPLICATIVE" PUBLIC COMMENT

Council Rule 8 governs "public comment" for City Council and Council Committee meetings. SDMC Section 22.0101. Rule 8(a) restates that portion of the Act which grants the right of public comment on matters of general interest to the public, but which are not particularized as items on the agenda. That is, Rule 8(a) governs "general public comments." In addition, Rule 8(a) requires that this right of "general public comment" be placed on the agenda for regular Council meetings. This Rule states: "Every agenda for a regular Council meeting shall provide a period on the agenda for members of the public to address the Council on items of interest to the public that are not on the agenda but are within the jurisdiction of the Council."

Rule 8(b) restates that portion of the Act that allows a local government to set limits on "duplicative" public comments. By its own terms, this rule applies to public comments on items that have been listed on an agenda. It does not refer to the types of "general public comments" that Rule 8(a) governs. This

Rule reads: "Notwithstanding the above Rule 8(a), no speaker shall be heard on any item that has already been considered by a Council Committee where members of the public were permitted to be heard on the item unless the Council determines by majority vote that the item has substantially changed since committee consideration."

The rest of Rule 8 and portions of Rule 9, which govern the procedure for debate, set forth the regulations that the City Council has adopted pursuant to its authority under Cal. Gov't Code Section 54954.3(b) about how people may make public comments at Council meetings. These regulations do not address the question of "duplicative" public comment and, therefore, are not quoted in this memorandum. A copy of these two rules, however, is attached for your reference.

CONCLUSION

We reviewed both state and local law to determine whether the Municipal Code may be amended to eliminate or reduce "duplicative" public comment. The answer differs depending on whether the public comment is on a particular item (called "particular public comment") or is of a general nature (called "general public comment"). Council Rule 8(b) already limits "duplicative particular public comment" for those items where members of the public already had an opportunity to be heard on the same item at a Council Committee meeting. This limitation conforms to the requirements of the Act.

The answer differs for "general public comments." To the extent that you seek to eliminate "duplicative general comment" entirely, we think the proposal would be prohibited by state law. "Duplicative general public comment," however, may be limited by the adoption of "reasonable regulations." Cal. Gov't Code Section 54954.3(b). We think the Council has already exercised its authority to limit "general public comment" by adoption of Council Rule 8(c), which limits any speaker to three (3) minutes and limits public comments on any subject to three (3) minutes. If you wish to propose other reasonable regulations limiting "general public comment," however, we will be happy to review them.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:014(x043.2)

Attachment

ML-94-95