Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: April 24, 2017

TO: Councilmember Scott Sherman, Council District 7

FROM: City Attorney

SUBJECT: Brown Act Requirements Concerning Public Comment

You have asked for legal review of three questions regarding applicability of the Ralph M. Brown Act (Brown Act or Act)[1] to City Council (Council) meetings:

1. How much discretion does a Council Committee (Committee) Chair have to limit the length of public testimony?

2. Must the City provide an opportunity for comment at Council on items that have been previously heard at a Committee in accordance with section 54954.3(a) of the Brown Act?

3. What requirements must the City follow in relation to broadcasting non-agenda public comment? Specifically, can the City turn off the cameras and only air audio?

SHORT ANSWERS

1. A Committee Chair has discretion to limit public testimony, provided the discretion is exercised reasonably and not in an arbitrary or capricious manner.[2]

2. The Council can amend the Rules of Council[3] to provide for public comment rules consistent with Section 54954.3 for items on the regular Council meeting agenda. However, the Council may not limit non-agenda public comment based upon the same comments having been made at a Committee meeting.

3. The Brown Act does not directly address broadcasting of public comment. If limiting audio broadcast from CityTV were deemed a limitation on public comment, the City could be in violation of the Act. The Council cannot adopt different rules for broadcasting audio

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[1] The Brown Act is found at California Government Code sections 54950-54963. All references in this memorandum are to those Government Code sections.
[2] *See* 2014 City Att'y MOL 172 (2014-16; Dec. 2, 2014) (ML-2014-16) attached to this memorandum as Attachment 1.
[3] The Rules of Council are found in San Diego Municipal Code Chapter 2, Article 2, Division 1.

on non-agenda public comment without a reasonable basis for doing so. Any such Council proposal should be reviewed carefully to ensure compliance with both First Amendment and Equal Protection rights.

ANALYSIS

The Brown Act, enacted in 1953, provides that "every agenda for regular meetings" of the legislative body "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. . . ." Cal. Gov't Code § 54954.3. The Act further provides that the legislative body may adopt reasonable guidelines limiting the total amount of time allocated for public comment on particular issues, and for each speaker. *Id*.

I. COMMITTEE CHAIR'S AUTHORITY TO LIMIT PUBLIC COMMENT ON AN AGENDIZED ITEM

This Office previously addressed the question of the Council's authority to limit public comment in ML-2014-16. We concluded that Council has wide discretion in limiting public testimony, but that the exercise of discretion must not be arbitrary or capricious. That same authority applies to a Committee Chair. The Rules of Council provide for the Committee Chair to preside over Committee meetings. SDMC §22.0101, Rule 6.7.1. This presiding function includes managing the order of business on the agenda and taking comment in compliance with applicable rules, including the Rules of Council. Robert's Rules of Order, Newly Revised (11th ed. 2011), p. 449-450. Thus, the Committee Chair's authority is the same as that of the Council President in exercising discretion to provide reasonable guidelines for public comment.

II. PUBLIC COMMENT ON ITEMS PREVIOUSLY HEARD AT COMMITTEE

As recently addressed by this Office, the Brown Act explicitly permits the Council to dispense with public comment on an agendized item previously heard at a standing committee of the Council where the public was afforded an opportunity to speak to the item at Committee and the item has not substantially changed since Committee. Cal. Gov't Code § 54954.3; City Att'y MOL No. 2017-2 (Mar. 24, 2017).[4]

This provision applies only to agenda items, not to non-agenda public comment. 1994 City Att'y MOL 858 (94-95; Dec.12, 1994).[5] At non-agenda public comment, the public has a right to speak to any item within the jurisdiction of the legislative body, whether that legislative body is a Committee or the Council itself. Cal Gov't Code §§ 54954.3, 54952(b).

[4] A copy of ML-2017-2 is attached to this memorandum as Attachment 2.
[5] A copy of ML-94-95 is attached to this memorandum as Attachment 3.

III. LIMITING BROADCAST VIDEO OR PERMITTING ONLY AUDIO FOR NON-AGENDA PUBLIC COMMENT

The public's right to comment at a public meeting is broadly construed. The legislative body's authority to restrict comment is essentially limited to keeping comments to matters within the legislative body's jurisdiction and preventing actual disruptive behavior. *See* 2003 City Att'y MOL 213 (2003-17; Sep. 19, 2003).

The Brown Act prohibits a public agency from restricting broadcast of its public meetings unless the agency finds that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings. Cal. Gov't Code § 54953.6. However, the Act does not require that the agency broadcast meetings, nor that the agency provide members of the public with the means to do so. Although we have no guidance from the courts on this issue, the League of California Cities' assessment is that the legislative body probably must allow members of the public to show videos or make a power point presentation, but is under no obligation to provide equipment. *Open and Public V: A Guide to the Ralph M. Brown Act, 37* (Revised April 2016). There is a chance a court could find that limiting broadcast video or permitting only audio broadcast of public comment is a limitation on public comment itself, in violation of the Act.

Council and Committee meetings are broadcast on CityTV. The City has a long history of permitting videos or PowerPoint presentations as part of public comment on both non-agenda and on agenda items. The exception is that the City does not permit the showing of gratuitous obscene or indecent material on CityTV.[6]

The Council should not treat non-agenda public comment differently than public comment on agenda items, unless the Council can state a reasonable basis for the disparate treatment. Otherwise, the action would be vulnerable to a legal claim for being arbitrary, again subjecting the City to potential liability under the Act, and to potential constitutional claims for violation of First Amendment or Equal Protection clause rights.[7]

CONCLUSION

A Committee Chair has the same discretion as the Council President in limiting public comment at Committee, provided there is a reasonable basis for limiting public comment. This could include, for example, a lengthy agenda or to ensure there is a quorum to complete the meeting. The Brown Act provides that, at a *regular* meeting of the Council, public testimony on an *agenda* item need not be taken if the public had an opportunity to speak to the item at a Committee and the item *has not substantially changed* since the Committee meeting. This exception does not apply to non-agenda public comment. Finally, the Council should not treat non-agenda public comment differently than public comment on agenda items without a

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[6] The City is currently updating its written guidelines for permissible content on CityTV, consistent with applicable laws addressing government speech.

[7] This analysis has been limited to a general review under the Brown Act. If the City Council wishes to explore this issue further, this Office would provide additional legal review, including a review of potential First Amendment and Equal Protection clause issues.

reasonable basis for doing so. Any proposed limitation on the City's audio broadcast of non-agenda public comment would need further legal review of constitutional issues, including potential First Amendment and Equal Protection clause issues.

MARA W. ELLIOTT, CITY ATTORNEY

By *__/s/ Prescilla Dugard__*
Prescilla Dugard
Chief Deputy City Attorney

PMD:cm
MS-2017-11
Doc. No. 1470575_6
Attachments:

1. 2014 City Att'y MOL 172 (2014-16; Dec. 2, 2014)
2. City Att'y MOL No. 2017-2 (Mar. 24, 2017)
3. 1994 City Att'y MOL 858 (94-95; Dec. 12, 1994)

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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 fromthree 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 specifyany 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 arbitraryor capricious manner.

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

ATTACHMENT 1

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 opportunityto 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 testimonyon 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 reasonablyand not in an arbitrary or capricious manner. *See, Nevens v. City of Chino*, 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 fromthe 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 testimonyon 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 statutoryreferences 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 LibraryCommission to limit comment to two minutes even thoughthe 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 specifya 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 fromthree 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 CountyBoard 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 anysubject 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 Clerka 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.

JAN I. GOLDSMITH, CITY ATTORNEY

By */s/Catherine M. Bradley*
Catherine M. Bradley
Deputy City Attorney

CMB:sc
ML-2014-16
Doc. No. 908539

ATTACHMENT 1

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MEMORANDUM OF LAW

DATE: March 24, 2017

TO: Honorable Members of the City Council

FROM: City Attorney

SUBJECT: Brown Act Rule Regarding Public Comment at City Council on Items Previously Considered at Council Committee

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INTRODUCTION

Councilmember Kersey has asked this Office for a memorandum on the applicability and scope of California Government Code (Government Code) section 54954.3,[1] specifically, the clause that provides that public comment is not required at City Council (Council) on an item that was heard at Council Committee and on which the public was afforded the opportunity to comment during the Council Committee meeting, so long as the item has not been substantially changed since the Council Committee meeting.

QUESTIONS PRESENTED

1. Does the Brown Act mandate public comment at Council on an item that was already heard at Council Committee?

    A. What is the scope of the Section 54954.3 provision limiting public comment on items previously heard at Council Committee?

    B. What is the meaning of "substantially changed"?

2. Does Section 54954.3 apply only to consent items?

[1] Government Code section 54954.3 is a provision of the Ralph M. Brown Act (Brown Act), Government Code sections 54950-54963, providing for meetings of legislative bodies to be noticed and open to the public, including public participation. All future references are to the California Government Code unless otherwise stated.

ATTACHMENT 2

SHORT ANSWERS

1. No. Section 54954.3 does not require that the Council take public comment on an agenda item at a *regular* meeting of the Council ifspecific requirements are met.

   A. This exception to the general rule mandating public comment is provided with respect to regular meetings only.

   B. Section 54954.3 leaves the determination of what is "substantially changed" to the legislative body. Although the phrase "substantially changed" is not specifically defined in the Brown Act, it is reasonable to conclude based on the legal definition of "substantial" that an "essential" or "material" change would be deemed a substantial change requiring public comment.

2. No. The Brown Act does not distinguish between discussion and consent items listed on an agenda. In either case, Section 54954.3 requires that the public be afforded an opportunity to speak to an item at some point, whether that is at a Council Committee meeting or a subsequent Council meeting or both.

ANALYSIS

I. DOES THE BROWN ACT MANDATE PUBLIC COMMENT AT A COUNCIL MEETING ON AN ITEM THAT WAS ALREADY HEARD AT A COMMITTEE?

Section 54954.3, subdivision (a) establishes the framework for public comment on an agenda item. Although this section requires that "[e]very 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 . . . ," it also carves out an exception to the public comment requirement. Public comment is not required on an agenda item at a regular meeting of the legislative body when all the following are met:

1. The item was considered by a committee composed exclusively of members of the legislative body at a public (open) meeting;

2. All interested members of the public[2] were afforded the opportunity[3] to address the committee on the item, before or during the committee's consideration of the item; and

[2] The Brown Act does not otherwise define "interested members of the public." However, the City's practice allows any person who submits a speaker slip to speak to an item on the agenda.

[3] The Brown Act provides discretion to the legislative body to adopt reasonable regulations for public comment, including regulations that limit time per speaker or per subject. Cal. Gov't Code § 54954.3(a); *See also* City Att'y MOL No. 2014-16 (Dec. 2, 2014), discussing the exercise of this discretion on non-agenda public comment.

3. The item has not substantially changed since the committee heard the item, as determined by the Council.

Cal. Gov't Code § 54954.3; 1994 City Att'y MOL 858 (94-95; Dec. 12, 1994).

A. Scope of Section 54954.3

The Section 54954.3 exception applies only to regular Council meetings, not special meetings. 1994 City Att'y MOL 858 (94-95; Dec. 12, 1994)[4]; *Galibso v. Orsosi Pub. Utility District*, 167 Cal. App. 4th 1063, 1079-80 (2008); *Chaffee v. San Francisco Library Commission*, 115 Cal. App. 4th 461, 468-69 (2004); 78 Op. Cal Att'y Gen. 224 (1995).

If each of the requirements is met and the item is scheduled on a regular Council agenda, the Brown Act does not require that public comment be taken on the agenda item.The first requirement would be met if the body were any of the Council standing committees[5] provided for under the Rules of Council. SDMC § 22.0101. The second requirement is discussed further in Section II of this memorandum.

B. Determination of Substantially Changed

Ultimately, Section 54954.3 leaves it up to the discretion of the legislative body to determine what constitutes "substantially changed."

There are no court cases providing further guidance on the interpretation of the phrase as used in Section 54954.3. However, Courts have held "substantial compliance" for notice purposes under the Brown Act, to mean "actual compliance *in respect to the substance essential to every reasonable objective of the statute*." *Castaic Lake Water Agency v. Newhall Co. Water District,* 238 Cal. App. 4th 1196, 1205, 1207 (2015) (citation omitted), as modified (Jul. 22, 2015), 238 Cal. App. 4th 1196 (emphasis added).

[4] This memorandum advised that this exception does not apply to non-agenda public comment at Council where the same comment was made at a committee meeting; the Council cannot restrict non agenda public comment at Council even if the same comment was made at an earlier Council Committee meeting.
[5] The Audit Committee does not meet the standard in Section 54954.3, because it is not made up exclusively of members of the legislative body (the Council). The exception does not apply to this committee.

Black's Law Dictionary defines "substantial" as:

> **1.** Of, relating to, or involving substance; *material* <substantial change in circumstances>. **2.** Real and not imaginary; having actual, not fictitious, existence <a substantial case on the merits>. **3.** *Important, essential, and material*; of real worth and importance <a substantial right> … **6.** Considerable in amount or value; *large in volume or number* <substantial support and care>. **. . .**

Black's Law Dictionary 1656 (10th ed. 2014) (emphasis added).

Absent specific guidance from the courts, the Council should consider the purpose for which the law was adopted, namely to ensure the public's right to attend meetings and to facilitate public participation in local government decision making. *Service Employees Inter. Union, Local 99 v. Options--A Child Care and Human Services Agency*, 200 Cal. App. 4th 869 (2011).

II. DOES SECTION 54954.3 APPLY ONLY TO CONSENT ITEMS?

The Brown Act does not distinguish between "consent" and "discussion" items in its public comment provisions. The requirement is simply that "all interested members of the public were afforded an opportunity to address the committee on the item." Matters are generally placed on consent for purposes of meeting organization and to allow the legislative body to take action in a summary fashion, that is, approving multiple items in a single vote or signaling no need for a staff report. *Robert's Rules of Order Newly Revised*, (11th ed. 2011), p. 361. Under the Brown Act, and in accordance with the Rules of Council, public comment is permitted on an agenda item when first discussed, regardless of whether the item is identified as "consent," "discussion," "information," or otherwise. Therefore, regardless of how the item is characterized when first docketed on a committee agenda, public comment must be permitted.

Likewise, the characterization of an item on the Council agenda as "consent" or "discussion" does not preclude application of the public comment exception for items heard at committee provided by Section 54954.3. The rule is simply that where public comment has been allowed on an item at committee and the item before the Council is not substantially changed, public comment is not required.

If the Council desires to make use of this Brown Act provision, whether such items are characterized on the subsequent Council agenda as "consent" or "discussion," we recommend the Council agenda identify those items meeting the requirements of Section 54954.3 and on which public comment will not be taken. We would further recommend amending the Rules of Council to address the issue, including clarifying for the public the Council's standards for "substantial change."

CONCLUSION

The Council may decide to limit public comment on an agendized item at Council that was previously heard at a standing committee of the Council if the requirements of Government Code section 54954.3 are met. Any material change or several changes to an item after Committee would constitute a "substantial change" requiring public comment at the subsequent Council meeting. If Council chooses to take this path, this Office recommends amending the Rules of Council to provide clearer guidance to the Council, staff, and the public.

MARA W. ELLIOTT, CITY ATTORNEY

By *__/s/ Prescilla Dugard__*
Prescilla Dugard
Chief Deputy City Attorney

LD1:PDM:ccm
ML-2017-2
Doc. No. 1423790_5
cc: Honorable Mayor Kevin Faulconer
Elizabeth Maland, City Clerk
Andrea Tevlin, Independent Budget Analyst

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

ATTACHMENT 3

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).

Cal. Gov't Code Section 54954.3(a).

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)σ, 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

ATTACHMENT 3