

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: July 26, 2023

TO: Honorable Mayor and Members of the City Council

FROM: City Attorney

SUBJECT: Invited Guest Presentations at San Diego City Council and Council Committee Meetings

INTRODUCTION

Councilmembers and other City officials sometimes permit representatives from outside organizations¹ (here, “invited guests”) to present information to the San Diego City Council or Council Committees (collectively, the Council) at publicly noticed meetings. Invited guests may be given more time to present than members of the public. This Office has been asked whether it is permissible under applicable law and City policies to allot more time to invited guests than to individual members of the public.

QUESTION PRESENTED

May Council allot more time to invited guests to present information than to individual members of the public on the same agenda item?

SHORT ANSWER

Yes. The Council may allot more time to invited guests to present information to the Council if the Council determines the invited guest offers expertise that will assist it in its decision-making process. However, no parties should be treated as invited guests for quasi-judicial proceedings. To ensure the practice is administered fairly and consistently, the Council may wish to adopt a policy establishing a process to evaluate the expertise of invited guests.

ANALYSIS

Two legal principles apply to the discussion of invited guest presentations and public comment at Council meetings: the Ralph M. Brown Act and freedom of speech protected by the United States and California constitutions.

¹ Outside organizations includes City boards, committees, and commissions.

I. THE BROWN ACT AUTHORIZES LEGISLATIVE BODIES TO CREATE PROCEDURES FOR MEETING MANAGEMENT

The Brown Act requires open, public meetings and gives the public a right to participate in Council meetings by addressing the legislative body directly. Public comment aids in open governance and supports the public's right to participate. *See* Cal. Gov't Code § 54954.3. The Brown Act also expressly permits Council to "adopt reasonable regulations . . . limiting the amount of time allocated for public testimony on particular issues and for each individual speaker" to allow for meeting management. Cal. Gov't Code § 54954.3(b)(1).

As the City's legislative body, Council meetings are limited public fora. *Norse v. City of Santa Cruz*, 629 F.3d 966, 975 (9th Cir. 2010). Individuals have a right to address public issues to those who govern their city, although this right is not without limitations. *Ribakoff v. City of Long Beach*, 27 Cal. App. 5th 150, 174 (2018). Although the Council can regulate the time, place, and manner of speech, and the content of speech to some degree, it must ensure that content-based speech regulations are reasonable and viewpoint neutral. *Norse*, 629 F.3d at 975; *see also Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266 (9th Cir. 1995); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).

II. INVITED GUESTS GIVEN MORE TIME MUST PROVIDE A CERTAIN LEVEL OF EXPERTISE THAT AIDS IN THE LEGISLATIVE PROCESS

Invited guests' presentations generally provide Council and the public with detailed analyses or specific information related to a particular agenda item. *Ribakoff*, 27 Cal. App. 5th at 172. Information received at these presentations can be very beneficial to those charged with decision-making, as well as those who are observing or participating during public comment.

A recent California court of appeals case provides helpful guidance. In *Ribakoff*, the court concluded that a public agency could give more time to staff and invited guests to present information to the agency's legislative body than it allows for the public to comment because of the different purposes served. *See Ribakoff*, 27 Cal. App. 5th at 172-73. At issue was a Board of Directors' (Board) rule limiting public comment to three minutes per commenter. *Id.* at 164. Plaintiff, a public commenter, used their three minutes to criticize the program being discussed by the Board. *Id.* at 157. During the same item, the Board allowed staff and third-party representatives (invited guests) to comment for more than three minutes. *Id.* at 156. The Board denied Plaintiff's request for additional time and threatened to remove him from the meeting for his disruptions. *Id.* at 164. Plaintiff subsequently sued the Board arguing, among other things, that the time limit imposed on the public and not on invited guests violated his First Amendment rights. *Id.* at 170.

In siding with the Board, the court reasoned:

[t]he purpose of [i]nvited guest presentations to the Board, or any similar body, is to present to the members of that body in their capacity as legislators, and to the public in attendance, what can be detailed—and perhaps lengthy—analyses of the particular agenda item, to inform both the members of the board and the public concerning the item.

Id. at 172. Applying the Boards’ three-minute comment rule to presentations by guests who are invited to speak based on their expertise defeats the purpose of inviting guests with expertise and does not promote informed decision-making by the legislative body.² *Id.* The court acknowledged that members of the public may also have expertise and useful comment for informed decision-making, but the number of public commenters must be considered in weighing the time allotted to public participation. *Id.* Further, the legislative body maintains the authority to manage meetings by regulating the number and length of invited guest presentations. Since public comment is potentially unlimited, a reasonable time limitation is justified. *Id.* Note, too, that the City of San Diego permits public commenters who appear in person to yield their time to others.

III. GIVING INVITED GUESTS MORE TIME TO PRESENT MUST BE VIEWPOINT NEUTRAL

Content-based restrictions must be viewpoint neutral and enforced that way. *Norse*, 629 F.3d at 975; *see also Kindt*, 67 F.3d at 270-71; *White*, 900 F.2d at 1425. A public agency can restrict public comment on specific agenda items to a specific amount of time and to the topics on the agenda so long as the speaker’s viewpoint is not suppressed. *See Chaffee v. San Francisco Public Library Comm’n*, 134 Cal. App. 4th 109, 115 (2005). Though limiting a commenter’s time to speak inevitably restricts how much they can say, time restrictions are not per se viewpoint discrimination because the substance of the remarks are not restricted. *Ribakoff*, 27 Cal. App. 5th at 177. Further, the public does not have “an unregulated right to respond in kind” to what is said or presented. *Kindt*, 67 F.3d at 272. Accordingly, restricting the public’s speech to a specific amount of time for each noticed agenda item and during non-agenda public comment is the type of time, place, and manner restrictions that preserve a public agency’s legitimate interest in conducting efficient, orderly meetings. *Id.* at 271.

By contrast, giving invited guests more time to present on a noticed agenda item could create viewpoint discrimination if the invited guest does not offer a level of expertise that aids the Council in its decision-making or fails to provide detailed analyses of the particular agenda item. When allowing invited guests more time, Council must not conflate expertise for mere opinion

² This memorandum does not address when the Council acts as a quasi-judicial body, where due process rights of the public must be preserved. No parties should be treated as invited guests for quasi-judicial proceedings. *See* 1990 Op. City Att’y 10 (90-2; June 15, 1990), for a detailed discussion of quasi-judicial proceedings and required constitutional due process principles.

and should be cautious of invited guests who do not provide expertise or detailed analyses related to the discussion. Instead of determining on a case-by-case basis whether an invited guest presentation should be allowed, the Council may wish to amend the Rules of Council to define when an invited guest presentation aids the Council in its decision-making. Before an invited guest speaks, the meeting chair should state on the record that the invited guest has been allotted extra time due to that speaker's expertise on the specific agenda matter. Without explanation, those making public comment may expect to receive the amount of time allotted to the invited guest.

CONCLUSION

Council may give more time to invited guests to present information on noticed agenda items than it provides to the public when invited guests offer a level of expertise what will aid the Council in its decision-making. Determining whether an invited guest offers the appropriate level of expertise must be determined on a case-by-case basis unless the Council adopts a policy establishing an evaluation process.

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By /s/ Justin R. Bargar

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