



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

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To: Chair Miadich, Commissioners Cardenas, Hatch, and Hayward

From: TJ Jones, Executive Director
Kevin Cornwall, Commission Counsel

Subject: Proposed Rules for Public Participation at FPPC Meetings

Date: September 9, 2019

INTRODUCTION

At its July meeting, the Commission asked staff to propose rules for public participation at Commission meetings. To date, the Commission has not adopted formal rules for such participation. Below are rules that staff believes will provide a preliminary foundation for regulating public comments at Commission meetings. Because the Commission may be experimenting with alternative means for public participation (audio, video, text), any set of rules may need to be supplemented as issues arise.

Currently, FPPC guidance with respect to public participation is limited to the following, which is included in each meeting agenda that is posted to the agency's web site¹:

1. Public Comment

During this comment period, any person is invited to speak on any topic that is not listed on this agenda. Action may not be taken on any matter raised during this public comment period until the matter is specifically listed on a future agenda. Those who wish to comment on an item that has been listed on this agenda may comment when that item has been opened for consideration by the Commission and before any action is taken.

PROPOSED RULES

Staff recommends the retention of the current web posting and, in addition, recommends the adoption of the following rules governing public participation:

Time-related Rules:

1. Individuals will have a maximum of three minutes to speak.²

¹ See, e.g., [FPPC August 2019 Meeting Agenda](#)

² Gov Code Sec. 11125.7 (b) ("The state body may adopt reasonable regulations . . . limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.") See, e.g., [CPUC Rules at Rule 3](#) (3 minutes); See also *Ribakoff v. Long Beach*, 27 Cal.App.5th 150 (2018) (3 minutes per person found "reasonable"); alternatively, two minutes may be acceptable, [California Citizens Redistricting Commission rules for public participation at Public Input Hearings](#) (2 minutes); *Chaffee v. Chiu*, 2012 WL 1110012 (N.D. Cal) (2 minutes)

2. Individuals requiring translation or interpretive services will have a maximum of six minutes to speak.³
3. The three minute speaking time may be changed by the Chair, depending on the number of speakers.⁴
4. Speakers may cede time to an individual spokesperson, but only under the following conditions:
 - a. Individuals ceding time forfeit their right to speak on the agenda item.
 - b. Designated spokespersons will be provided a maximum of five minutes to address the Commission on a single item.⁵
5. If a speaker is interrupted by a question or comment from a member of the Commission, the Chair, at the Chair's discretion, may offer a reasonable extension of the allotted time in order for the speaker to finish prepared comments, or to respond to Commissioner questions.⁶
6. The Commission reserves the right to limit the total amount of time allocated for all public comments on a particular issue, and may publish such limitation in advance on the agenda for the meeting.⁷
7. If the total amount of time allocated for public comments is limited by the Commission, individuals who do not receive the opportunity to speak due to the expiration of the allocated time may submit comments in writing during the meeting, which comments shall be made part of the record.

Organizational Rules:

1. Except as otherwise directed by the Chair, public comment at meetings shall be received on a first come, first served basis.
2. The Chair, at the Chair's discretion, may take comments out of order.⁸

per person found "reasonable"); at least one state agency limits comments to one minute: [California State Board of Education public comment guidelines](#)

³ Gov Code Sec. 11125.7 (c) ("when a state body limits time for public comment the state body shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the state body").

⁴ See [CPUC Rules at Rule 3](#). Any alternative time must be applied equally to all speakers, and the legitimate reason for the change in the allowable amount of time should be stated on the record (e.g., "because we have 80 speakers, we will be limiting comment to one minute per person so that we are able to hear all comments"; or, "because we have only three speakers, and the issue is highly complex, we will be allowing four minutes per speaker."). Any such time limitation change may be (but does not necessarily need to be) posted in advance on the agenda. Pursuant to Gov Code Sec. 11125.7 (c), if the Commission alters the per-person allotment of time, any commenter requiring translation service must be allotted twice the amount of time.

⁵ See [California Fish & Game Commission rules for public participation at meetings](#). See also 14 CCR Sec. 665 (b) (3) (A) (1) (governing Fish & Game Commission) ("Ceding time. The presiding commissioner may allot up to five minutes for a person to comment on an agenda item if at least three other persons are present when the agenda item is called and forgo their opportunity to speak to that agenda item."); [CPUC Rules at Rule 2](#) ("Individuals with a shared position are encouraged to select a spokesperson for their group.")

⁶ See, e.g., Reg. Sec. 552.1 (b) (3) (Bd. Of Admin. Of CalPERS) ("The Presiding Officer may increase or reduce the time limit . . . in a viewpoint-neutral manner . . .")

⁷ See Gov Code Sec. 11125.7 (b) ("The state body may adopt reasonable regulations . . . limiting the total amount of time allocated for public comment on particular issues . . .").

⁸ See, e.g., [CPUC Rules at Rule 4](#) (" . . . public officials may be taken out of order")

3. Any speaker who is a compensated spokesperson on behalf of another person or entity shall disclose the person(s) or entity(ies) on whose behalf he or she is speaking.

Rules of Order:

1. A speaker will address only the Commission during public comment, and shall not direct comments at other members of the public in attendance, except with express, advance permission of the Chair.⁹
2. A speaker will yield the floor to any member of the Commission that wishes to ask a question or otherwise speak during the speaker's comment.¹⁰
3. A speaker shall not use profanity or lewd language in a manner that is disruptive to conducting of the meeting.¹¹
4. A speaker shall limit comments to the subject matter of the agenda item being heard.¹²
5. A speaker shall limit comments to matters that are subject to the Commission's jurisdiction.¹³
6. The Chair retains the right to stop any speaker who fails to heed warnings from the Commission that the speaker's comments are repetitious¹⁴, irrelevant,¹⁵ or abusive¹⁶ to the extent that they are disrupting the meeting. Nothing herein should be interpreted as prohibiting comments solely because they represent or include criticism of acts, omissions, policies, programs, or services of the FPPC.¹⁷
7. Members of the public in attendance may not purposefully disrupt any speaker or participant of the meeting, including members of the public seeking to provide public comment, through audible comments, gestures, outbursts, or other distractions.¹⁸

⁹ See, e.g., *Acosta v. Costa Mesa*, 718 F.3d 800 (9th Cir. 2012) (Speaker removed after soliciting audience to shout support for his position; held to be an actual "disruption"); see also *U.S. v. Kokinda*, 497 U.S. 720, 733-34 (1990) (law prohibiting solicitation of alms in public space upheld)

¹⁰ See, e.g., *Shapiro v. Carlsbad*, 2014 WL 443841 (Cal App, 4th Dist., Div. 1) (February 4, 2014) ("When a speaker is unwilling to recognize the authority of a presiding officer or moderator, the speaker is per se disrupting proceedings. Public comments that are not subject to such rudimentary controls by a presiding officer or moderator invite useless chaos, which in no way serves the public interest or public discourse.")

¹¹ See, e.g., [California State Board of Education public comment guidelines](#) ("Speakers shall refrain from using profanity and shall conduct themselves in a respectful manner.")

¹² Reg. Sec. 552.1 (b) (1) (Bd. Of Admin. Of CalPERS) ("Public comment is limited to the subject matter of the agenda item being heard"); [Cannabis Control Appeals Panel Public Comment Notice](#) ("The public may provide appropriate comment on any issue before the panel at the time the item is discussed"); see *White v. City of Norwalk*, 900 F.2d 1421, 1426 (9th Cir. 1990) ("in dealing with agenda items, the Council does not violate the first amendment when it restricts public speakers to the subject at hand")

¹³ See [CPUC Rules at Rule 10](#) ("The Commission President retains the right to stop any speaker who raises an issue that is not under the Commission's jurisdiction.")

¹⁴ *White, supra* at 1426 (a governing body "certainly may stop [a public commenter] if his speech becomes irrelevant or repetitious")

¹⁵ *Id.*

¹⁶ See, e.g., *Thornton v. Kirkwood*, 2008 WL 239575 (E.D. Mo.) (Public speaker's ejection from meeting was not a violation of 1st Amendment rights where speaker began remarks by continually repeating the word "jackass")

¹⁷ Gov. Code Sec. 11125.7 (d) explicitly allows such criticism: "The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law."

¹⁸ See, e.g., [California Citizens Redistricting Commission rules for public participation at Public Input Hearings](#) ("Please be respectful of those who are speaking and do not make any audible comments, gestures, outbursts or

8. Members of the public in attendance may not disrupt any other attendee(s) from viewing, hearing, or legitimately participating, in any material portion of the meeting.
9. Members of the public in attendance may not disrupt any videotaping or audiotaping conducted by the FPPC for the public.
10. Members of the public shall not bring signs, flags, banners, exhibits, marquees, or other demonstrative objects into the meeting room. Members of the public may carry and/or display paper materials no larger than letter-sized paper in the meeting room, provided that such paper materials are displayed below shoulder height, and do not otherwise obstruct the view of any other attendee(s).¹⁹
11. Any speaker, or other member of the public in attendance, that expressly advocates or encourages another to violate these rules of order, or to otherwise disrupt the meeting, shall be removed at the request of the Chair.²⁰
12. If a disturbance occurs in the meeting, the meeting may be stopped by the Chair in order to quell the disturbance or, in the event the disturbance continues, the Commission may take other necessary steps, including clearing the room of up to all members of the public and/or adjourning the meeting.²¹

Rules Related to Audio, Video and Text-based Comments by the Public

1. Speakers who provide commentary at Commission meetings through a remote audio or video link are subject to the same rules as those providing live comments at the meeting, except insofar as the medium makes compliance with any rule impracticable. The Chair will make determinations of impracticability as appropriate.
2. In order to efficiently conduct Commission meetings and prevent unnecessary delay or disruption, any profanity or clearly irrelevant content in a text-based public comment may be redacted before the comment is publicly displayed at a Commission meeting. Original comments will be preserved and available for public inspection following the meeting.
3. The Commission reserves the right to limit and/or reject text-based submissions that are duplicative of submissions (*i.e.*, “cut and paste”) that are additionally presented to the Commission in other written form.²²

other distractions supporting or opposing the speaker that would result in disrupting or delaying the hearings or which would result in the distraction of the speaker.”)

¹⁹ See, e.g., [California Citizens Redistricting Commission rules for public participation at Public Input Hearings](#) (“Objects and symbolic materials, such as signs or banners, will be allowed in the meeting room with the following restrictions . . .”); [CPUC Rules at Rule 12](#) (“Signs brought by meeting attendees are limited to 8 ½ by 11 inches in size. Sticks or any other type of handle are strictly prohibited. Larger signs, or signs with handles, may be left in the area between the auditorium entrance and the security screening, for retrieval after the meeting.”)

²⁰ Gov Code Sec. 11125.7 (“In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.”); [CPUC Rules at Rule 17](#) (“The Commission retains the right to remove disruptive attendees from the Commission meeting.”)

²¹ See, e.g., [California Citizens Redistricting Commission rules for public participation at Public Input Hearings](#)

²² Although case law is lacking on this specific point, generally duplicative and/or repetitious commentary may be prohibited. See *White, supra* at 1426.

4. The Commission reserves the right to limit text-based submissions that are of a length that disrupts the ability of other commenters to have their texts received by the Commission.
5. The Commission recommends that text-based comments not exceed 1,000 characters, and reserves the right to impose character limitations for text-based comments in advance of any meeting.
6. The Commission reserves the right to reject and/or “block” any content that is received from a source that is not a human being.
7. The Commission reserves the right to limit the display of text-based commentary received from any individual commenter if the commenter submits multiple texts with duplicative commentary. Nevertheless, original comments will be preserved and available for public inspection following the meeting.