



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION

1102 Q Street • Suite 3000 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

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

**From:** Dave Bainbridge, General Counsel, Legal Division  
Brian Lau, Assistant General Counsel, Legal Division  
Kevin Cornwall, Counsel, Legal Division

**Subject:** Pre-Notice Discussion of Regulation 18310.1 – “Public Participation at Meetings”

**Date:** February 10, 2020

---

As part of an ongoing effort to implement rules relating to public participation at Commission meetings, staff proposes Regulation 18310.1 – “Public Participation at Meetings”—for pre-notice discussion. At its July 2019 meeting, the Commission asked staff to propose rules for public participation at Commission meetings. At that point, the Commission had not adopted any formal rules regarding public participation. In September, staff proposed rules for regulating public comments at Commission meetings, which the Commission adopted. In October, the Commission adopted a supplemental rule regarding public speakers’ requests to use audio/visual aids. Staff now proposes public participation rules as a formal regulation, with a few revisions. The proposed regulation is divided into three major sections, “Time,” “Organization and Order,” and “Audio, Video, and Text-Based Comments by the Public,” discussed further below.

Discussion

I. Legal Background

Section 11125.7 of the Bagley-Keene Act states that with limited exceptions, state bodies “shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body’s discussion or consideration of the item.” (Section 11125.7(a).) “The state body 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 comment on particular issues and for each individual speaker.” (Section 11125.7(b).) Further, “[t]he state body shall not prohibit 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.” (Section 11125.7(d).) The Political Reform Act similarly establishes that “[m]eetings of the Commission shall be public except that the Commission may provide otherwise for discussions of personnel and litigation,” and “[t]he Commission has primary responsibility for the impartial, effective administration and implementation of this title.” (Sections 83110, 83111.)

“[W]hen the government intends to grant only ‘selective access,’ by imposing either speaker-based or subject-matter limitations, it has created a limited public forum.” (*Seattle Mid-east Awareness Campaign v. King Cnty.*, 781 F.3d 489, 497 (9th Cir. 2015)). The Ninth Circuit has stated, “city council meetings, once open to public participation, are limited public forums. A council can regulate not only the time, place, and manner of speech in a limited public forum, but also the content of speech—as long as content-based regulations are viewpoint neutral and enforced that way.” (*Norse v. City of Santa Cruz*, 629 F.3d 966, 975 (9th Cir. 2010) (*Norse*)). Likewise, the United States Supreme Court has held, “[o]nce it has opened a limited forum, . . . the State must respect the lawful boundaries it has itself set. The State may not exclude speech where its distinction is not ‘reasonable in light of the purpose served by the forum,’ . . . nor may it discriminate against speech on the basis of viewpoint.” (*Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995)).

Given the above, the proposed rules are intended to facilitate effective Commission meetings in a viewpoint-neutral manner.

## II. Rules Regarding Time

In general, the proposed rules regarding time establish a default amount of time allocated to individual members of the public who wish to comment on a particular issue, while still providing the Chair and Commission with flexibility to alter the time allotted when necessary. The rules also permit multiple speakers to cede their time in order to allow an individual spokesperson to speak for an extended period of time (five minutes).

## III. Rules Regarding Organization and Order

The number of rules pertaining to organization and order establish the default manner in which comments are to be received at meetings (“first come, first serve”), while also affording the Chair the ability to take comments out of order at the Chair’s discretion. The rules also establish several requirements intended to help Commission meetings run effectively and without disruption. These rules effectively require members of the public to refrain from disrupting the meeting by, for example, speaking on an issue outside the scope of the agenda item, directing comments at other members of the public in attendance, and using disruptive profanity or lewd language. The rules are intended to keep meetings on track, while still clearly preserving the rights of members of the public to participate in the meetings, including criticism of acts, omissions, policies, programs, or services of the FPPC.

The substance of this section of the Regulation was largely based on the rules adopted by the Commission in September. However, some of the provisions have been edited, consolidated, or reorganized primarily for style, simplicity, or clarity. Notably, the final provisions of this proposed section are intended to more clearly delineate the actions the Chair may take to address violations of the regulation and other conduct that is disruptive to the meeting.

Lastly, the rules adopted in September required, “[a]ny speaker who is being compensated for speaking at the Commission meeting shall disclose that fact at the beginning of the speaker’s comment.” Upon further research and consideration, however, staff does not

recommend the implementation of such a rule. Staff notes that the Bagley-Keene Act provides, “[n]o person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.” (Section 11124.) Although the rule expressly refers to conditions of attendance, and does not refer to conditions of speaking, the Attorney General’s primer on the Bagley-Keene Act states, with regard to Section 11124, “while the Act does not prohibit use of a sign-in sheet, notice must be clearly given that signing-in is voluntary and not a pre-requisite to either attending the meeting *or speaking at the meeting.*” ([California Attorney General’s Office, “A Handy Guide to the Bagley-Keene Open Meeting Act 2004](#), p. 9 (emphasis added).)

Requiring compensated speakers to disclose the source of their compensation would likely be interpreted as requiring speakers to identify themselves or “fulfill [a] condition precedent to his or her attendance” or participation. Moreover, nothing precludes the Commission from requesting that the relevant information is disclosed if it wishes, so long as the Commission recognizes that the speaker is not required to provide the information and may decline. Accordingly, staff recommends against including this provision in the regulations.

#### IV. Rules Regarding Audio, Video and Text-Based Comments by the Public

The rules regarding audio, video and text-based comments were implemented to coincide with the Commission’s introduction of real-time, web-based public comments in September 2019. These rules are similarly intended to impose reasonable, viewpoint-neutral restrictions on electronic comments, such that Commission meetings may run effectively while also allowing a greater number of members of the public to participate. In contrast to the current FPPC Policy, rules pertaining to disruptive comments have been consolidated into a single standard that would permit the rejection or limitation of the public display of comments where it is reasonably foreseeable the comments would disrupt, unnecessarily delay, or otherwise interfere with the efficient conducting of the meeting, but also makes clear that such comments would be preserved for public inspection following the meeting.

#### V. Conclusion

Staff recommends the Commission approve proposed Regulation 18310.1 for public notice of the proposed adoption. Generally, this regulation will codify the rules previously adopted by the Commission as FPPC policy. Compared to the policy, the proposed regulation includes a limited number of revisions that would improve the organization, clarity, and efficiency of the rules pertaining to public participation at Commission meetings. Accordingly, staff offers the proposed regulation for the Commission’s consideration. Commission comments and direction will be incorporated into the proposed regulation before submitting it on to the Office of Administrative Law for public notice of the proposed adoption. As always, staff also welcomes public comment regarding the proposed regulation, preferably receiving such comments with sufficient time to consider them before the April Commission meeting, at which point the staff anticipates the consideration of the adoption of the regulation.

Attachments:

- Proposed Regulation 18310.1
- September 9, 2019 Memo to Commission, “Proposed Rules for Public Participation at FPPC Meetings”
- October 8, 2019 Memo to Commission, “Proposed Rules for Speakers’ Use of Audio/Visual Equipment at FPPC Meetings”