

CITY COUNCIL MEETING
JULY 15, 1987

AMENDMENTS TO THE
LODI MUNICIPAL CODE
PROCEDURAL
ORDINANCE APPROVED

ORD. NO. 1403
INTRO.

CC-6
CC-138
CC-149

City Attorney Stein reported on a meeting held on June 8, 1987 in Sacramento comprised of Deputy Attorney General Ted Prim, Mayor Evelyn Olson, City Clerk Alice Reimche, Lodi News Sentinel Reporter Julie Schmit, and City Attorney Ron Stein. The purpose of the meeting was to discuss a problem that came up at the June 3, 1987 Council meeting regarding the ability of citizens and/or council to discuss non-agendaed items under the requirements of the Brown Act. As a result of that meeting City Attorney Stein presented a number of recommendations to the City Council for consideration.

Following discussion, on motion of Mayor Pro Tempore Snider, Reid second, Council introduced Ordinance No. 1403 entitled, "An Ordinance of the Lodi City Council Amending Chapter 2.04 Of The Lodi Municipal Code Relating to Order Of Business At City Council Meetings".

Further, Council limited to five minutes, the time allowed per non-agenda item, for comments made by the public. This would give the City Council ample time to determine through discussion whether the "Comments by the Public" falls into one of the exceptions to the Brown Act (Government Code §54950 et seq.) under Government Code §54954.2, allowing council to take action on the item by finding either:

- a) that there was an emergency situation, or
- b) that the need to take action on an item arose subsequent to the agenda's being posted.

Further, Council directed the City Clerk to have printed on the agenda itself, standard language advising the public of the five-minute time limitation; as well as standard language advising as follows:

"The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code §54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

"Unless the City Council is presented with this factual evidence, the City Council will refer the matter to staff for review and placement on a future City Council agenda."

Further, Council determined that in an extreme case, to allow for additional agenda items up to five days prior to a city council meeting. This would require that the additional agenda item also be posted within the seventy-two hour limit as provided by Government Code §54954.2, as well as included in the current agenda.

Finally, Council concurred that Council Members need to contact the City Clerk to add any additional items or reports under the council comments portion of the agenda, unless the item falls into an exception under Government Code §54954.2.

COUNCIL COMMUNICATION

TO: THE CITY COUNCIL

DATE:

NO.

FROM: THE CITY MANAGER'S OFFICE

July 15, 1987

SUBJECT:

Consider Amendment to the Lodi Municipal Code Procedural Ordinance

PREPARED BY: City Attorney

RECOMMENDED ACTION: 1. Amend Lodi Municipal Code §2.04.100, copy attached - "Order of Business" by placing item I. "Comments by city council members" and item J. "Comments by the public on non-agenda items", on the agenda following item E.1 "Consent calendar", and prior to item F. "Public hearings", as suggested in the attached ordinance.

2. Limit to five minutes, the time allowed per non-agenda item, for comments made by the public. This would give the city council ample time to determine through discussion whether the "comments by the public" falls into one of the exceptions to the Brown Act (Government Code §54950 et seq.) under Government Code §54954.2 (copy attached), allowing council to take action on the item by finding either:

- a) that there was an emergency situation, or
- b) that the need to take action on an item arose subsequent to the agenda's being posted.

If the city council determines by a unanimous vote that (a) there is an emergency situation, or determines by a 2/3 vote, that (b) the need to take action on an item arose subsequent to the agenda's being posted, then the item would be placed at the end of item K. "Regular calendar" for discussion, deliberation, and/or appropriate action. If the council determines that the item does not fall within exceptions (a) or (b), the mayor can refer the item to staff for a report at a subsequent council meeting.

3. Have printed on the agenda itself, standard language advising the public of the five-minute time limitation as recommended in item 2 above; as well as standard language advising as follows:

"The city council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the city council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code §54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

"Unless the city council is presented with this factual evidence, the city council will refer the matter to staff for review and placement on a future city council agenda."

4. In an extreme case, allow for additional agenda items up to five days prior to a city council meeting. This would require that the additional agenda item also be posted within the seventy-two hour limit as provided by Government Code § 54954.2, as well as included in the current agenda.

5. Advise the city council that they must contact the city clerk to add any additional items or reports under the council comments portion of the agenda, unless the item falls into an exception under Government Code §54954.2.

BACKGROUND INFORMATION, DISCUSSION AND ANALYSIS: On June 8, 1987, a luncheon meeting was held in Sacramento, comprised of Deputy Attorney General Ted Prim, Mayor Evelyn Olson, City Clerk Alice Reimche, Lodi News Sentinel Reporter Julie Schmit, and City Attorney Ron Stein. The purpose of the meeting was to discuss a problem that came up at the June 3, 1987 Lodi City Council meeting regarding the ability of citizens and/or council to discuss non-agendaed items under the requirements of the Brown Act. Specifically, the concern is what is the interplay between Government Code §54954.2, THE AGENDA POSTING REQUIREMENTS, and Government Code §54954.3 copy attached, THE OPPORTUNITY OF THE PUBLIC TO ADDRESS A LEGISLATURE BODY on items of interest to the public that are in subject matter jurisdiction. GC §54954.3 appears to allow individual(s) to bring up subjects before the city council and allow discussion, but with the caution that there can be no action taken on the item unless there is information before the legislative body that there is either (a) an emergency situation, or (b) that the need to take action arose subsequent to the posting of the agenda. (GC §54954.2)

Mr. Prim cautioned our group that "action taken" not only includes the vote by a majority of the members of a legislative body when sitting as a body or entity; but also a positive or negative collective decision, commitment or promise made by a majority of the members of the legislative body. (GC §54952.6, copy attached) When one looks at the language of the legislative intent in the Brown Act, one finds that it applies, not only to "action taken", but also to "deliberations".

It was suggested by Mr. Prim that when a member of the public brings up an item which does not appear on the agenda, that the council ask appropriate questions to determine what council action is required; whether it be referral to the staff, or that immediate action on that particular item is required. If referral is the decision, the Mayor would refer the item to staff, to be brought back on a future agenda. This would not be considered "action taken". Otherwise, the council must determine by a 2/3 majority vote that there is an immediate need to take action, and that the need arose subsequent to the agenda being posted, and at that point, the city council may further discuss and deliberate on the item, and take the appropriate action.

One salient comment made by Mr. Prim was that GC §54954.3 - THE OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE LEGISLATIVE BODY was never intended to permit members of the public to bring a citizens group to a city council meeting for the purpose of a public hearing on an item that has not been agendaed. Mr. Prim felt that this was not only unfair to the city

council, but it was unfair to the persons not in attendance and unaware that particular item was being brought up. Further, Mr. Prim felt that it could be used as a subterfuge to avoid having an item listed on the agenda, and could therefore violate the intent, if not the letter of the Brown Act.

To avoid the problem of the citizens group taking over the floor on a non-agendaed item, GC §54954.3 would permit a city council to pass regulation, limiting the amount of time which an individual(s) may speak on a non-agendaed item. For example, adopting a five-minute time limit would give enough time for the individual to address the subject, and to state enough facts for the council to determine whether there is a need to take action immediately, because of an emergency situation, or that the need to take action arose subsequent to the posting of the agenda, or whether it is an item which can be referred to staff. (GC §54954.3(b), copy attached) This time limitation would avoid the council's getting into more than a minimal discussion to get the facts out on the table prior to making a decision.

In order to avoid individual(s) waiting for long periods of time for the opportunity to speak under "citizens' comments on non-agenda items", that item could be printed on the agenda between the "consent calendar" and "public hearings". If the council determines that there is an emergency, or the need to take action arose after the agenda was prepared, then they can vote to hear the item, and shift the item to the end of the regular calendar.

The reason this two prong approach is suggested of making the initial determination and then shifting the item to the end of the regular calendar, past the "public hearings" items, is that the individuals who are attending the meeting for a noticed public hearing or a regular agenda item should be given priority, since they had followed prescribed procedures to have their item placed on the agenda, whereas the people speaking during the "citizens' comments" portion are just coming out from the audience with questions and comments.

City Council Discussion of Non-Agendaed Items.

As to city council members bringing up non-agendaed items under I. "COMMENTS BY CITY COUNCIL MEMBERS", Mr. Prim was concerned about the city council giving direction on an item, such as asking the staff to write a letter on a piece of legislation, etc. His reasoning is that, unlike the public, the council cannot discuss items that are not on the agenda (GC §54954.2), unless they can determine that there is an emergency situation or the need to take action arose after the agenda was posted. It was therefore suggested by Mr. Prim that, if the council member has a report on a meeting attended, or wants action on a particular item, that they give notice to the city clerk to place that item on the agenda. However, if the council is aware of an emergency situation requiring immediate action, there would be no problem with them addressing that at the council meeting, since it would probably fall into an exception under Government Code § 54954.2. If the proper vote is taken, immediate action can be taken. If it is a problem of a lessor nature, the council member could give the location of a problem area and at that point have the Mayor refer that item to staff. The

referral to staff would be without any vote and would not be considered
action taken.

Respectfully submitted,



RONALD M. STEIN
City Attorney

attachments

ccbrnac/txta.01v

2.04.100 Order of business—**Assembly of officers.**

At the hour set by this chapter or other ordinance on the day of each regular meeting, the members of the council, the city clerk, city manager and city attorney shall take their regular stations in the council chambers and the business of the council shall be taken up for consideration and disposition in the following order, except that with the unanimous consent of the council, matters may be taken out of order and that the order of business set forth in this section may be changed from time to time by the adoption of a resolution by the city council:

- A. Roll call;
- B. Invocation;
- C. Pledge of allegiance;
- D. Presentations:
 - 1. Awards.
 - 2. Proclamations;
- E. Reports of city manager:
 - 1. Consent calendar;
- F. Public hearings;
- G. Planning commission;
- H. Communications (city clerk);
- I. Comments by city council members;
- J. Comments by the public on non-agenda items;
- K. Regular calendar;
- L. Ordinances;
- M. Adjournment. (Prior code § 2-9)

2.04.110 Approval of minutes.

Unless the reading of the minutes of a council meeting is requested by a member of the council, such minutes may be approved without reading if the clerk has previously furnished each member with a copy thereof. (Prior code § 2-10)

2.04.120 Rules of debate.

A. Presiding Officer May Debate. The mayor or such other member of the council as may be presiding may move, second and debate from the chair, subject only to such limitations of debate as are by these rules imposed upon all members. He shall not be deprived of any of the rights and privileges of a councilman by reason of his action as the presiding officer.

B. Getting the Floor, Decority and Aptness. Every member desiring to speak shall address the chair, and, upon recognition by the presiding officer, shall confine himself to the question under debate, avoiding all personalities and indecorous language.

C. Interruptions. A member, once recognized, shall not be interrupted when speaking unless it be to call him to order, or as otherwise provided in this chapter. If a member, while speaking, is called to order, he shall cease speaking until the question of order be determined, and, if in order, he shall be permitted to proceed.

D. Privilege of Closing Debate. The councilman moving the adoption of an ordinance or resolution shall have the privilege of closing the debate.

E. Remarks of Councilman. A councilman may request, through the presiding officer, the privilege of having an abstract of his statement on any subject under consideration by the council entered in the minutes. If the council consents thereto, such statement shall be entered in the minutes.

F. Rules of Order. Except as otherwise provided in this article, "Robert's Rules

ORDINANCE NO. _____

AN ORDINANCE OF THE LODI CITY COUNCIL
AMENDING CHAPTER 2.04 OF THE LODI MUNICIPAL CODE
RELATING TO ORDER OF BUSINESS AT CITY COUNCIL MEETINGS

BE IT ORDAINED BY THE LODI CITY COUNCIL.

SECTION 1. Lodi Municipal Code Chapter 2.04, Section 2.04.100
"Order of business--Assembly of officers", is hereby amended to read
as follows:

"At the hour set by this chapter or other ordinance on the day of each regular meeting, the members of the council, the city clerk, city manager and city attorney shall take their regular stations in the council chambers and the business of the council shall be taken up for consideration and disposition in the following order, except that with the unanimous consent of the council, matters may be taken out of order and that the order of business set forth in this section may be changed from time to time by the adoption of an ordinance by the city council:

- "A. Roll call;
- B. Invocation;
- C. Pledge of allegiance;
- D. Presentations;
 - 1. Awards,
 - 2. Proclamations;
- E. Consent calendar;
- F. Comments by city council members;
- G. Comments by the public on non-agenda items;
- H. Public hearings;
- I. Planning commission;
- J. Communications (city clerk);
- K. Regular calendar;
- L. Ordinances;
- M. Adjournment."

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and

published in the City of Lodi and shall be in force and take effect
thirty days from and after its passage and approval.

Approved this day of

EVELYN M. OLSON
Mayor

Attest:

ALICE M. REIMCHE
City Clerk

State of California
County of San Joaquin, ss.

I, Alice M. Reimche, City Clerk of the City of Lodi, do hereby certify
that Ordinance No. was introduced at a regular meeting of the
City Council of the City of Lodi held
and was thereafter passed, adopted and ordered to print at a regular
meeting of said Council held by the following vote:

Ayes: Council Members -
Noes: Council Members -
Absent: Council Members -
Abstain: Council Members -

I further certify that Ordinance No. was approved and signed by
the Mayor on the date of its passage and the same has been published
pursuant to law.

ALICE M. REIMCHE
City Clerk

Approved as to Form

RONALD M. STEIN
City Attorney

hear grievance with respect to proposed discharge of an employee of the municipal railway system was not a "legislative body" as defined by the statute, nor was the hearing a "meeting" within meaning thereof, and thus such statute did not require that such hearing be public. *Wilson v. San Francisco Municipal Ry.* (1973) 105 Cal.Rptr. 855, 29 C.A.3d 870.

Meetings of a local admissions committee of a county superintendent of schools relating to the admission of an educationally handicapped child in special education classes are not subject to the Ralph M. Brown Act. 56 Ops.Atty.Gen. 14, 1-10-73.

§ 54952.5. **Legislative body as including permanent boards or commissions of local agencies**

As used in this chapter "legislative body" also includes, but is not limited to, planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency.

(Added by Stats.1961, c. 1671, p. 3637, § 2.)

Historical Note

The introductory provision of § 2 of Stats.1961, c. 1671, p. 3637, adding this section read:

"Section 54952.2 is added to said code, to read". Both the title and the text of the act, however, used section "54952.5."

Law Review Commentaries

Land development and the environment: Subdivision Map Act. (1974) 5 Pacific L.J. 55.

Notes of Decisions

1. In general

The SOFAR coordinating committee is subject to the open meeting requirements of the Ralph M. Brown Act if, upon resolution of the factual question whether it is two subcommittees or a single commit-

tee with independent existence, duties and functions it is in fact a single committee, but if it is in fact two subcommittees then the "less than a quorum" exception would be applicable. 64 Ops.Atty.Gen. 856, 7-14-81.

§ 54952.6. **Action taken, definition**

As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

(Added by Stats.1961, c. 1671, p. 3637, § 3.)

§ 54953

GOVERNMENT CODE

§ 54953. Meetings to be open and public; attendance

Cross References

School expulsion hearings, closing or opening to public, see Education Code § 48918.

Law Review Commentaries

How California governs the news media Jon H. Sylvester, 26 Santa Clara L. Rev. 381 (1986)

Notes of Decisions

3. Meetings

Series of nonpublic contacts at which quorum of local redevelopment agency was lacking at any given time was proscribed by public meeting law where contacts were planned by or held with collective concurrence of quorum of body to privately discuss public's business, either directly or indirectly through agency of nonmember. *Stockton Newspapers, Inc. v. Members of Redevelopment Agency of City of Stockton* (App. 3 Dist 1985) 214 Cal Rptr. 561, 171 C.A.3d 95.

Series of nonpublic telephone conversations, each between member of local redevelopment agency and its attorney, for commonly agreed purpose of obtaining collective commitment or promise by majority of that body concerning public business constituted "meeting" within purview of public meeting law. *Stockton Newspapers, Inc. v. Members of Redevelopment Agency of City of Stockton* (App. 3 Dist. 1985) 214 Cal Rptr. 561, 171 C.A.3d 95.

Concept of "meeting" under public meeting law comprehends informal sessions at which local legislative body convenes itself collectively to particular future decision concerning public business. *Stockton Newspapers, Inc. v. Members of Redevelopment Agency of City of Stockton* (App. 3 Dist. 1985) 214 Cal Rptr. 561, 171 C.A.3d 95.

Meeting concept of public meeting law cannot be confined exclusively to either action by local agency or deliberation,

but rather, comprehends both and either. *Stockton Newspapers, Inc. v. Members of Redevelopment Agency of City of Stockton* (App. 3 Dist 1985) 214 Cal Rptr. 561, 171 C.A.3d 95.

4. Executive sessions, generally

This section and § 54952 prohibit exclusion of public during city council sessions at which salaries of non-elected city officers or employees are discussed and/or determined, except when specific non-elected officers' or employees' job performance is evaluated; city council should meet in executive session for that purpose only and, upon determining if the individual warrants salary adjustment, hold properly noticed, public meeting to determine that adjustment. *San Diego Union v. City Council of City of San Diego* (App. 4 Dist 1983) 196 Cal Rptr. 49, 146 C.A.3d 647.

Meetings of board of directors and executive committee of Sedano Economic Development Corporation are not subject to open meeting requirements of Ralph M. Brown Act, (Gov. C. § 54950 et seq.) 67 Ops Atty Gen. 487, 11-20-84.

8. Meetings with legal counsel

An advisory committee created by the board of supervisors to advise it on airport matters may meet with counsel in closed session to discuss litigation to which the board is the sole party representing the interests of the county. 67 Ops Atty Gen. 111, 3-20-84.

14. Violations—In general

It would be a violation of the Ralph M. Brown Act (§ 54950 et seq.) for member of a city council to hold a series of closed discussions with citizens having matters of business pending before them together or convey information regarding those matters where the discussions are held on successive dates and are so planned to insure that a quorum of the council will not be present at any given meeting. 65 Ops Atty Gen. 63, 1-22-82.

§ 54954.2. Agenda; posting; action on other matters

(a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. No action shall be taken on any item not appearing on the posted agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the following conditions:

- (1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.
- (2) Upon a determination by a two thirds vote of the legislative body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that the need to take action arose subsequent to the agenda being posted as specified in subdivision (a).
- (3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(Added by Stats.1986, c. 641, § 5.)

§ 54954.3. Opportunity for public to address legislative body; regulations

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on items of interest to the public that are within the subject

Underline indicates changes or additions by amendment

GOVERNMENT CODE

§ 54956.5

matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, in the case of a meeting of a city council in a city or a board of supervisors in a city and county, the agenda need not provide an opportunity for members of the public to address the council or board on any item that has already been considered by a committee, composed exclusively of members of the council or board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, unless the item has been substantially changed since the committee heard the item, as determined by the council or board.

(b) 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. (Added by Stats.1986, c. 641, §.6)

§ 54956. Special meetings; call; notice

A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering personally or by mail written notice to each member of the legislative body and to each local newspaper of general circulation, radio or television station requesting notice in writing. The notice shall be delivered personally or by mail and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public. (Amended by Stats.1986, c. 641, § 7.)

Notes of Decisions

Closed discussions with citizens 5

5. Closed discussions with citizens

It would be a violation of the Ralph M. Brown Act (§ 54950 et seq.) for member of a city council to hold a

series of closed discussions with citizens having matters of business pending before them together or convey information regarding those matters where the discussions are held on successive dates and are so planned to insure that a quorum of the council will not be present at any given meeting. 65 Ops Atty Gen. 63, 1-22-82.

§ 54956.5. Emergency meetings in emergency situations

In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

For purposes of this section, "emergency situation" means any of the following:

- (a) Work stoppage or other activity which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.
- (b) Crippling disaster which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

However, each local newspaper of general circulation and radio or television station which has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting by telephone and *** a) telephone numbers provided in the most recent request of such newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

Asterisks *** indicate deletions by amendment