

MINUTES OF THE ADJOURNED JOINT MEETING OF
THE MONTCLAIR CITY COUNCIL AND REDEVEL-
OPMENT AGENCY BOARD HELD ON MONDAY,
DECEMBER 2, 2002, AT 5:45 P.M. IN THE CITY HALL
CONFERENCE ROOM, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor/Chairman Eaton called the meeting to order at 5:45 p.m.

II. ROLL CALL

Present: Mayor/Chairman Eaton; Council Members/Directors Paulitz and Ruh; City Manager/Executive Director McDougal; Director of Redevelopment/Public Works Staats; Director of Community Development/Agency Planner Clark; City Attorney/Agency Counsel Robbins; City Clerk/Agency Secretary Crawford

Absent: Mayor Pro Tem/Vice Chairman Dutrey (arrived at 5:48 p.m.); Council Member/Director Raft (arrived at 5:50 p.m.)

III. PUBLIC COMMENT - None

IV. COUNCIL/AGENCY WORKSHOP

A. Public Comment Policy

City Manager/Executive Director McDougal reviewed the *Public Comment Policy Survey* included in the agenda. He introduced **Mr. Scott Tiedermann, Liebert Cassidy Whitmore**, an employee-relations law firm retained by the City.

Mayor Pro Tem/Vice Chairman Dutrey arrived at 5:48 p.m.

Council Member/Director Paulitz reported that in an informal public comment survey he conducted three years ago of all 16 cities in San Bernardino County, seven allow three minutes per speaker for public comment, three cities (including Montclair) allow five minutes, and five cities have no formal policy. He added that the cities' respective public comment sections of their agendas are situated in a variety of locations. He commented that the majority of cities allow three minutes for public comment, adding that

one city, the **City of Loma Linda**, allows a total of 30 minutes for all public comments.

Council Member/Director Raft arrived at 5:50 p.m.

Council Member/Director Paulitz stated he would be in favor of suggesting the draft *Rules of Decorum – City Council – City of Montclair* document be amended to allow a certain length of time for all public comment as well as to limit the number of minutes per speaker per meeting similar to the seven-minute limit that is allowed at the **San Bernardino Associated Governments** Board meetings.

Mr. Tiedermann reported on the following two laws that regulate public comment at City Council meetings:

1. The right to free speech under the First Amendment, **U.S. Constitution**, and the **California Constitution**, which require that any rules imposed by local governments be limited to reasonable time, place, and manner restrictions with nothing "viewpoint discriminatory," meaning that if a viewpoint is allowed on a particular matter, then at least one or more viewpoint(s) must also be allowed.
2. The **Ralph M. Brown Act**, which permits members of the public to comment at City Council meetings. He added that the **Brown Act** allows the governing boards of local government to impose reasonable regulations concerning public comment at such meetings, making certain that the regulations are viewpoint neutral and that careful consideration is made by the moderator when making determinations regarding potentially disruptive speakers or members of the audience.

Despite the two laws regulating public comment, **Mr. Tiedermann** reported there are very few cases that have actually dealt with this subject. He reported on the following cases:

1. The most important case in this jurisdiction, *White v. City of Norwalk*, took place in 1990 in the **9th Circuit Court of**

Appeals and dealt with two individuals who were highly critical of the City Council and who, on three separate occasions, were ruled out of order by the presiding member of the Council and escorted from the Council Chambers. These individuals sued the **City of Norwalk** on the basis that the policy imposed by that city was unconstitutional and violated their First Amendment rights.

Noting the court found in favor of the **City of Norwalk**, **Mr. Tiedermann** advised that the draft *Rules of Decorum - City Council - City of Montclair* developed by staff, City Attorney/Agency Counsel Robbins, and him are premised on the rules in effect in the **City of Norwalk**. He noted the following important observations made by the **9th Circuit Court of Appeals** in this case:

- (a) Residents have an "enormous First Amendment interest in directing speech about public issues to those who govern their city. On the other hand, the City Council meeting is just that: a governmental process with a governmental purpose. Thus, in dealing with agenda items, the Council does not violate the First Amendment when it restricts public speakers to the subject at hand."
- (b) While a speaker may not be stopped when speaking because the moderator disagrees with what he is saying, he certainly may be stopped if his speech becomes irrelevant or repetitious.
- (c) The nature of a Council meeting means that a speaker can become disruptive in ways that would not meet the test of an actual breach of the peace or by using "fighting" words that are likely to incite immediate combat. A speaker may disrupt a Council meeting by speaking too long, by being unduly repetitious, or by extended discussions of irrelevancies.

Of course, the point at which speech becomes unduly

repetitious or largely irrelevant is not mathematically determinable. The role of the moderator involves a great deal of discretion.

2. In the 1995 case, *Kent v. Santa Monica Rent-Control Board*, a local Santa Monica landlord became upset because the Board was discussing subjects that he believed to be beyond the Board's jurisdiction, such as Nicaragua, Iraq, and political affairs in Southeast Asia, rather than matters dealing with rent control in Santa Monica. This individual could be overheard making loud comments in the audience during meetings and was warned he could be ejected if he continued to disrupt these meetings.

In analyzing the individual's claim, the **9th Circuit Court of Appeals** made the following important observation: "Limitations on speech at these public meetings must be reasonable and viewpoint neutral, but that is all they need to be."

3. In a 1970 case, entitled *In Re. Kay*, the **California Supreme Court** made an important observation about the conduct of members of the audience. In that case, individuals were arrested for disturbing the peace while heckling the speaker at a public demonstration. The court made the following assessment: "The heckling and harassment of public officials and other speakers while making public speeches is as old as American and British politics. Thus such behavior, while discourteous and rude, is protected speech."

Mr. Tiedermann advised of the importance of this case because the draft *Rules of Decorum - City Council - City of Montclair* include the regulation of behavior of members of the audience.

4. Another important case to keep in mind is the California Central District trial court case, *Baca v. Moreno Valley Unified School District*. The **Moreno Valley Unified School District** had imposed regulations prohibiting a member of the public from

complaining about employees, including identifying the employees by name or position, at school district meetings. In this particular case, a parent had complained that the school superintendent and a principal had failed to heed parental complaints and comments about the schools. She had been warned that continued mention of these employees by name or position would result in her ejection from the meeting, which, in fact, occurred. The judge in the case held that comments by members of the public at a meeting are protected speech, even if they are, in fact, later determined to be defamatory against a public employee.

Mr. Tiedermann reviewed the draft *Rules of Decorum - City Council - City of Montclair* document. He emphasized that the proposed policy is not aimed at deterring speakers from exercising their First Amendment rights but rather is directed at making meetings as efficient as possible by limiting the behavior of meeting attendees to a manner that is conducive to the efficient running of the meeting.

Mayor/Chairman Eaton asked if speakers could be required to identify themselves and give their respective addresses.

Mr. Tiedermann answered, "A person cannot be required to give their name under the **Brown Act**, but there's nothing wrong with requiring them to fill out speakers' cards, either."

Council Member/Director Paulitz inquired as follows:

1. He asked for clarification of Section E, "Guidelines for Recording Meetings," Subsection A, "A 'persistent disruption' can include but is not limited to the following."

Mr. Tiedermann responded that this section identifies types of behavior during recordation of meetings that could be considered disruptive.

Council Member/Director Paulitz suggested this subsection could also relate to Section B, "Rules of Decorum," Subsection 4, "Members of the Audience," and asked if it is also included in any other section of the draft *Rules of Decorum - City Council - City of Montclair*.

Mr. Tiedermann indicated a description of types of disruptive behaviors during meetings is addressed in Section B(3), "Persons Addressing the Council."

2. He asked about the possibility of audience noise being determined "disruptive" after it reaches a certain decibel level."

Mr. Tiedermann agreed that if such public behavior causes the Council to be unable to hear the business being conducted, then it would be at the presiding officer's or majority of the Council's discretion to determine the removal of those audience members causing the disruption. He indicated the draft policy would assist in that regard.

Mayor Pro Tem/Vice Chairman Dutrey noted the areas of the agenda allowing for public comment, including "Public Comment," during which the public may comment on subjects not appearing on the agenda, and "Public Hearings." He asked for clarification on the right of the public to comment during the "Consent Calendar" section of the agenda as compared to "Public Hearings."

Mr. Tiedermann responded that the "Public Hearing" section

provides the opportunity for the public to comment on agendaized public hearing matters, whereas the "Consent Calendar" section does not. He added that the public could comment on "Consent Calendar" items during the general "Public Comment" section of the agenda as well as on any matter under the jurisdiction of the City of Montclair.

Discussion took place on the City's policy of allowing the public to remove "Consent Calendar" items for comment. **Mr. Tiedermann**

suggested that the draft *Rules of Decorum – City Council – City of Montclair* document be revised to reflect that policy.

Council Member/Director Ruh asked if any cities in the region practice similar rules of decorum.

Noting that he is not familiar with cities in this area, **Mr. Tiedermann** indicated a number of cities elsewhere in the state have rules of decorum in place, including the cities of **Norwalk**, **Torrance**, and **Monterey**. He indicated that a survey of area cities could be conducted.

Council Member/Director Ruh stated it would be important to know if neighboring cities have such rules. He expressed his concern about restricting the public's right to speak on City issues.

Mr. Tiedermann assured Council Member/Director Ruh that the draft rules have been developed with that in mind and were based on rules in place in the **City of Norwalk**, which were found to be constitutional by the **9th Circuit Court of Appeals**. He indicated that a survey would reveal rules imposed by cities in this area.

In response to Council Member/Director Ruh's concern, Council Member/Director Paulitz advised that certain agendas of those he collected from other cities for his informal public comment survey contain rules regulating public comment in certain sections throughout the agenda. He described the rules contained in the **City of Ontario's** agenda.

Council Member/Director Ruh suggested the City Council needs to seriously consider whether or not to adopt a formal set of rules if other area cities have none in place.

Mayor/Chairman Eaton commented as follows:

1. He advised that it is not his goal to prevent the public from speaking, though he noted the importance of establishing "ground rules."
2. He suggested the "Public Comment" section of the agenda be

moved to the end of the agenda to allow City business to first be conducted.

Mr. Tiedermann indicated that cities vary in where the public comment section of their agendas is located, either at the beginning or end of the agenda. He stated there are advantages and disadvantages to both.

Council Member/Director Ruh spoke in support of the current practice for the benefit of allowing seniors, students, and youth groups to comment earlier in the evening.

Council Member/Director Raft concurred.

Mayor/Chairman Eaton stated he does not necessarily disagree.

Mayor/Chairman Eaton asked for consensus of the Council to change the number of minutes afforded each speaker during the "Public Comment" section of the agenda.

Council Member/Director Paulitz suggested the time be changed to three minutes.

Moved by Council Member/Director Paulitz for the following items:

1. That Section C, "Addressing the Council," Subsection (4) of the draft *Rules of Decorum - City Council - City of Montclair* be amended as follows:
 4. Each person shall limit his or her remarks to 3 minutes on any given subject, unless the presiding officer or a majority of the Council Members present determine that a different limit is appropriate.
2. That the following item be added to Section C:
 - (a) Each person shall be afforded a total of

12 minutes to comment during a meeting.

Mayor Pro Tem/Vice Chairman Dutrey commented as follows:

1. He expressed the importance of the public being given an opportunity to speak on issues affecting the City, as it is a fundamental part of the democratic process. He likewise expressed the importance of meetings being conducted in an orderly manner to allow for an efficient deliberative process of the Council. He spoke in support of the proposed rules of decorum, which offer effective clarification on proper conduct during meetings.
2. He spoke in support of revising the number of minutes afforded each speaker to comment on any given subject to three minutes, which is a sufficient amount of time for speakers to get their point across.
3. He concurred with Mayor/Chairman Eaton that the "Public Comment" section of the agenda should follow the "Consent Calendar" section because typically members of the public attend these meetings to address specific items of business. Noting the repetitive nature of certain speakers in the past, he expressed his opinion that the business of the City should be conducted first. He added that certain urgent public comment items could be placed at the beginning of the meeting at the Mayor's discretion to accommodate those speakers. He also suggested that certain public comment items could be placed under the "Presentations" section at the beginning of the agenda.

Moved by Mayor Pro Tem/Vice Chairman Dutrey and seconded by Mayor/Chairman Eaton for the following items:*

1. That Section C, "Addressing the Council," Subsection (4) of the draft *Rules of Decorum - City Council - City of Montclair* be amended as follows:

4. Each person shall limit his or her remarks to 3 minutes on any given subject, unless the presiding officer or a majority of the Council Members present determine that a different limit is appropriate.
2. That further consideration be given at a later date for the "Public Comment" section of the agenda to directly follow the "Consent Calendar" section.

City Attorney/Agency Counsel Robbins reminded the Council that the draft *Rules of Decorum – City Council – City of Montclair* is only being considered for discussion purposes at this meeting.

Noting he has been a regular attendee at Council meetings, **Mr. Art Van Deventer, Monterey Manor Mobile Home Estates, 11250 Ramona Avenue, Space 902, Montclair**, stated he has often observed the frustration level of speakers who do not receive immediate responses to their questions during "Public Comment." He spoke in strong support of locating the "Public Comment" section of the agenda after the "Consent Calendar" section, which would allow speakers to receive quicker responses to their questions. He indicated that as a resident of Montclair, he is interested in the business portion of the meetings, which is one of his reasons for attending. He further spoke in support of the three-minute time limit per speaker being proposed.

Council Member/Director Raft commented as follows:

1. She recalled that at one time, speakers were limited to three minutes per subject. She spoke in support of maintaining the City's current practice.
2. She spoke in support of the "Public Comment" section of the agenda directly following the "Consent Calendar" section.

Council Member/Director Ruh commented as follows:

1. He expressed his opinion that five minutes allows the average person who may not be a public speaker to express him/herself and spoke in support of maintaining the status quo.
2. He reiterated his support of leaving the "Public Comment" section at the beginning of the agenda for the benefit of allowing seniors, students, and youth groups to comment earlier in the evening.

In response to Council Member/Director Raft's comment regarding a former three-minute rule, Council Member/Director Paulitz recalled that at one time the City allowed speakers unlimited time for public comment, until a speaker at a Planning Commission meeting abused the privilege by speaking for half an hour on a matter. He stated it was as a result of that incident that the five-minute limit was established.

Noting he has regularly attended Council meetings for the past five years and citing his experience as a member of the Planning Commission, **Mr. Maynard Lenhart**, 9858 Ramona Avenue, Montclair, expressed his opinion that three minutes affords ample opportunity for speakers to express themselves on any given subject. Identifying himself a senior resident, he added that seniors interested in commenting on any matter would have no problem doing so later in the meeting.

*Motion carried by an informal show of hands as follows:

AYES: Paulitz, Dutrey, Eaton

NOES: Ruh, Raft

ABSTAIN: None

ABSENT: None

Council Member/Director Ruh received confirmation that area cities would be surveyed to determine their practices regarding similar rules of decorum.

Mayor/Chairman Eaton advised that a revised version of the draft *Rules of Decorum - City Council - City of Montclair* would be presented to the Council at a later date for its review and consideration. He thanked **Mr. Tiedermann** for his comprehensive presentation.

V. ADJOURNMENT

At 6:38 p.m., Mayor/Chairman Eaton adjourned the City Council and Redevelopment Agency Board of Directors.

Submitted for City Council/Redevelopment Agency Board approval,

Yvonne L. Smith
Transcribing Secretary