

From: [Ducey, Peggy](#)
To: [Lemos, June](#)
Subject: FW: Public Comment -- 2/13/2023 CC Mtg., Item No. 5G, Revised Public Comment Policy
Date: Thursday, February 9, 2023 8:52:44 AM

From: Jacob Patterson <jacob.patterson.esq@gmail.com>
Sent: Wednesday, February 8, 2023 3:21 PM
To: Lemos, June <jlemos@fortbragg.com>; City Clerk <cityclerk@fortbragg.com>
Subject: Public Comment -- 2/13/2023 CC Mtg., Item No. 5G, Revised Public Comment Policy

City Council & Staff,

I reviewed the revised public comment policy and it looks good to me. Not only do I not object to anything in this new version, I am happy with it. I paid particular attention to Verbal Comments # 9 and Written Comments # 4. I support the revised language and think it resolves the issues that I noticed in the version presented at the last meeting and those which were mentioned by other people in their comments. For example, simply changing language to recommendations or encouragement was critical. That way, the intent of promoting courteous and polite comments is emphasized but in a way that doesn't have the potential to impinge on speakers' rights when they don't want to be as polite.

That said, I would like to raise a remaining concern, which isn't primarily about the policy itself but about how the City actually implements public comment procedures. This concern relates to Written Comment # 7 because it starts with "Upon receipt, written comments will be distributed to the appropriate Board, City Council, or Planning Commission members." I am concerned about the language "upon receipt" because there is a significant Brown Act compliance concern relating to making sure all relevant information that is being considered by the legislative body (including that provided through public or responsible agency comments on an agenda item) has actually been made available to the public at the same time that it has been distributed to the legislative body (technically a quorum thereof). Some of this is addressed in the policy, including in the new language in # 7 but not all of it, particularly as applied to comments that have been forwarded after business hours, over the weekend, or on Wednesday in-service days. Relatively recent case law that is published and thus binding precedent discussed the situation and clarified how to comply with the Government Code requirements to make information available for public inspection.

Similarly, there are additional non-statutory considerations for formal public hearing agenda items that involve due process concerns for the meeting participants, particularly permit applicants. Those are basically addressed through the new language in #7 requiring printed copies at the meeting itself but it would also be prudent to include the applicant (and appellant if the public hearing involves an appeal) on the emails forwarding written public comments to the Planning Commission or City Council so they have sufficient opportunity to review and potentially respond to issues raised by opponents to their projects.

Anyway, the City's actual practices do not appear to meet these legal obligations based on my review of the City's history distributing public comments evaluated against the relevant Government Code Section (54957.5) and pertinent case law (e.g., *Sierra Watch v. County of Placer* (2021) 69 Cal.App.5th 1). This policy doesn't address that particular issue, which is

probably good, but City staff and management should probably review actual practices with the City Attorney's Office to ensure we are not continually creating Brown Act violations by, for example, forwarding emailed public comments to the City Council outside of normal business hours or at other times when City Hall is not actually accessible by members of the public who want to exercise their right to inspect all relevant information that is being considered by the legislative body in the upcoming meeting. It is also important that when staff forward emailed public comments to the legislative body, they contemporaneously (or even beforehand) print the comments and add them to the meeting clipboard available for public inspection at City Hall. I have tested this on numerous occasions and it has not always been done.

A related but distinct situation is when staff fails to include correspondence from other public agencies and consulting entities (e.g., The Coastal Commission, Caltrans, CDFW, and the Sherwood Valley Band of Pomo Indians) in the agenda materials but has relied on or referenced such communications in the staff reports or other agenda materials. The public has a right to review the relevant source communications if they are pertinent to the decision at hand and it is best practice to include the actual source documents in the agenda materials. The City's past practices are inconsistent, with such documents sometimes included as agenda item attachments and other times they have been omitted.

Regards,

--Jacob