



To: Jim Cason

From: Craig Leen, City Attorney for the City of Coral Gables

A handwritten signature in black ink, appearing to be "CL", is written over the end of the "From:" line.

RE: Legal Opinion Regarding City Policies On Public Testimony At Public Meetings

Date: September 18, 2013

The law relating to public testimony at public meetings goes into effect October 1st. It is my view that the City's procedural rules already provide allowance for public comment, and that you would already recognize a member of the public who would like to speak on a subject before the Commission (time limits are also already provided in the Code). I would just point out that items on the consent agenda may be pulled by members of the public (which allows them to comment on those items as well). The Clerk already tells the public that items can be pulled when publishing the consent agenda, so I do not believe any change would be required. I hope this is helpful, and I am available to discuss the law with you further at your convenience.

Hernandez, Cristina

From: Leen, Craig
Sent: Wednesday, September 18, 2013 3:55 PM
To: Hernandez, Cristina
Subject: FW: City Policies on Public Testimony at Public Meetings
Attachments: Memo re Public Testimony at Public Meetings and article.pdf

Please place in the opinion folder.

Craig E. Leen
City Attorney

From: Leen, Craig
Sent: Wednesday, September 18, 2013 3:54 PM
To: Cason, Jim
Subject: FW: City Policies on Public Testimony at Public Meetings

Mayor Cason,

Please see attached and below. The law relating to public testimony at public meetings goes into effect October 1st. It is my view that the City's procedural rules already provide allowance for public comment, and that you would already recognize a member of the public who would like to speak on a subject before the Commission (time limits are also already provided in the Code). I would just point out that items on the consent agenda may be pulled by members of the public (which allows them to comment on those items as well). The Clerk already tells the public that items can be pulled when publishing the consent agenda, so I do not believe any change would be required. I hope this is helpful, and I am available to discuss the law with you further at your convenience.

Best regards,
Craig

Craig E. Leen
City Attorney

From: Salerno, Patrick
Sent: Wednesday, September 18, 2013 3:34 PM
To: Leen, Craig
Subject: FW: City Policies on Public Testimony at Public Meetings

Craig - Please handle appropriately. Thanks

Pat

City Manager
City Of Coral Gables
305-460-5201

From: Lisa W. Dove [mailto:ldove@fcities.com]
Sent: Wednesday, September 18, 2013 2:49 PM
To: Salerno, Patrick
Subject: City Policies on Public Testimony at Public Meetings

Memorandum

TO: Key Officials

FROM: Kraig Conn, Legislative Counsel

SUBJECT: REMINDER: City Policies on Public Testimony at Public Meetings

DATE: September 18, 2013

Prior to October 1, 2013, each city should review existing (or consider adopting) policies on public testimony at public meetings. Policies should be considered for meetings of the elected body, as well as meetings of appointed bodies. This review should be performed to ensure compliance with SB 50 from the 2013 Legislative Session, which becomes effective October 1, 2013. Attached is an article printed in the May/June 2013 Quality Cities magazine that further explains the requirements from SB 50.

If you have any questions, please contact me at kconn@flcities.com.

Kraig Conn, Legislative Counsel
Florida League of Cities
PH: 850-222-9684



Memorandum

TO: Key Officials
FLC Board of Directors
Local & Regional Leagues

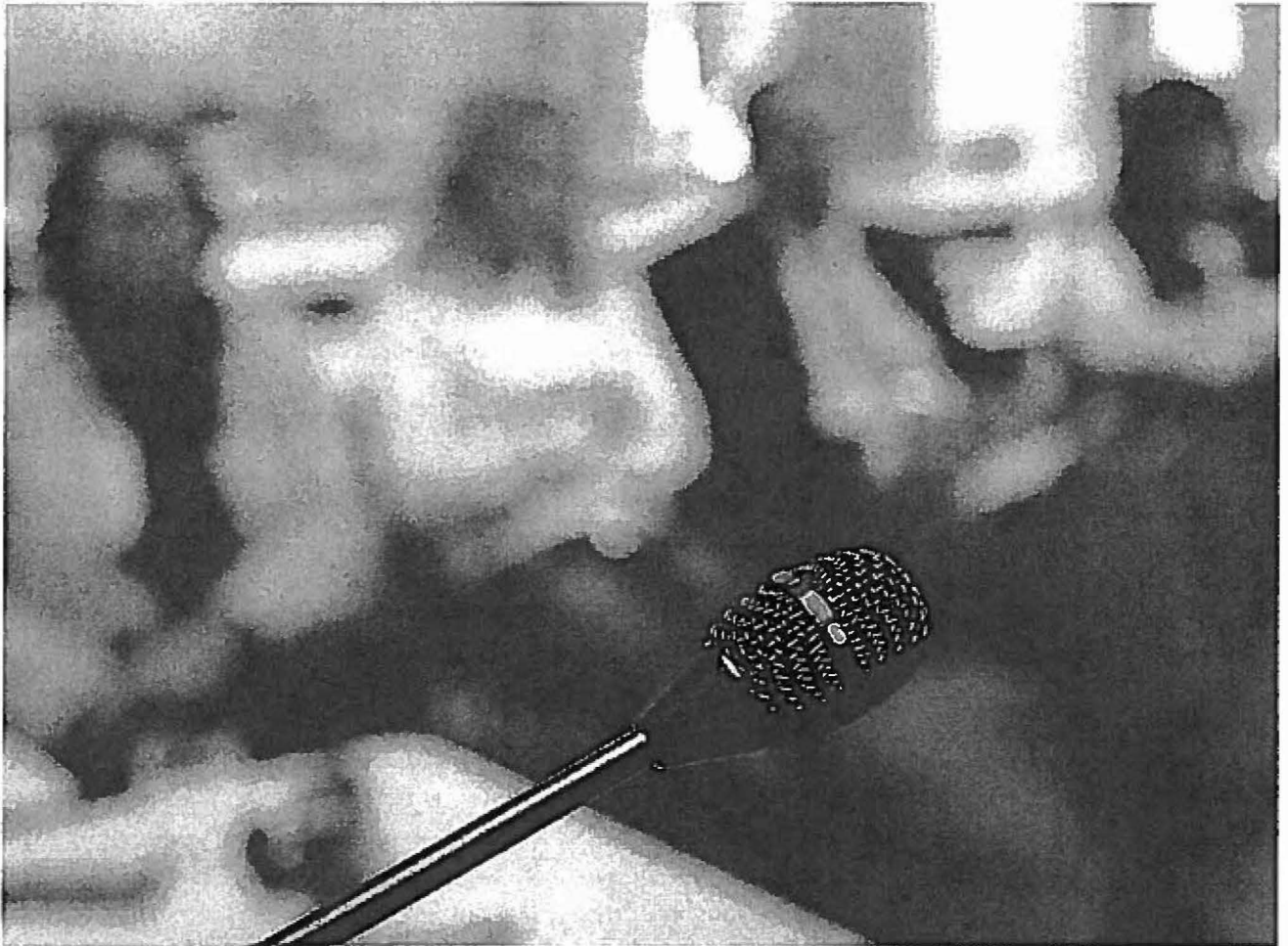
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If you have any questions, please contact me at kconn@flcities.com.



Bill Codifies Rules on Public Input at Local Government Meetings



BY KRAIG CONN
FLORIDA LEAGUE OF CITIES

CS/CS/SB 50 by Sen. Joe Negron, which passed during the 2013 legislative session, requires local governments, including appointed bodies, to provide members of the public with a reasonable opportunity to be heard on matters before the local government. Currently, the Florida Constitution and Florida statutes are silent concerning

whether the public has a right to be heard at a public meeting.

To date, Florida courts have heard two cases directly addressing whether a member of the public has a right to be heard at a meeting when he or she is not a party to the proceedings. Both cases held that while the public has a

right to attend a public meeting, there is no requirement that the public be given an opportunity to speak or be heard at a public meeting.

Most, if not all, cities likely provide opportunities for the public to be heard at public meetings or on matters coming before the city. If your elected city commission or other appointed city boards or commissions do not already have a policy on speaking at public meetings, you should consider adopting one under the general guidelines within the bill.

The bill creates Section 286.0114, Florida Statutes, and states that a board or commission must provide members of the public with a reasonable opportunity to be heard on a "proposition" before the board or commission. "Board or commission" is broadly defined to include any agency or authority of a county, municipal corporation or political subdivision. The bill does not define "proposition," but it is likely intended to be broadly applied to include all matters coming before the board or commission.

While the bill requires that members of the public be given a reasonable opportunity to be heard, the opportunity does not have to occur at the same meeting where the board or commission takes official action on an item, whether by formal vote or other final action. However, the opportunity to be heard must comply with the following provisions:

- ▶ The opportunity must occur at a meeting that is during the "decision making" process; and
- ▶ The opportunity must be within reasonable proximity in time before the meeting at which the board or commission takes the official action.

The bill does not specifically state that the opportunity to be heard must occur prior to the official action being taken on an item, but it does imply that this timeframe should apply.

The bill states that nothing in the new law prohibits a board or commission from maintaining orderly conduct or proper decorum in a public meeting. It also allows a board or commission to establish rules or policies on providing testimony. However, the rules or policies can only do the following:

- ▶ Provide guidelines regarding the amount of time an individual has to address the board or commission;
- ▶ Prescribe procedures allowing representatives of groups or factions to address the board or commission, rather than all of the members of the groups or factions;
- ▶ Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her position on a proposition; or to indicate his or her designation of a representative speaker; and

- ▶ Designate a specified period of time for public comment.

The requirement to provide a reasonable opportunity to be heard does not apply under the following circumstances:

- ▶ When an official act must be taken to deal with an emergency situation affecting the public health, welfare or safety, if compliance with the speaking requirements would cause an unreasonable delay in the ability of the board or commission to act;
- ▶ For an official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
- ▶ At a meeting during which the board or commission is acting in a quasi-judicial capacity with respect to the rights or interests of a person; and
- ▶ At a meeting that is exempt from the Sunshine or Open Meetings Law (Section 286.011, Florida Statutes).

The bill provides that if an action is filed against a board or commission to enforce the opportunity to be heard, a court is to assess reasonable attorney's fees against the board or commission if it is determined that a violation occurred. The court can assess reasonable attorney's fees against an individual filing an action if the court finds that the action was filed in bad faith or was frivolous. A court can also issue an injunction for the purpose of enforcing the opportunity to be heard.

CS/CS/SB 50 also provides that if a board or commission adopts rules or policies and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with the law. Significantly, the bill also specifically provides that any action taken by a board or commission that is found to be in violation of the opportunity to be heard is *not* void as a result of the violation.

Hopefully, CS/CS/SB 50 will not have a significant effect on the current operations of elected city commissions and city-appointed boards or commissions, as most of these bodies likely already provide opportunities for public input. If your city has not already done so, you may want to consider adopting rules or policies on public testimony that are applicable to meetings of both the elected and appointed entities. The bill is effective on October 1, 2013, and cities should use the next several months to review, and update if needed, current rules or policies on public testimony before city boards or commissions.

Kraig Conn is legislative counsel for the Florida League of Cities. ■