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MONTROSE • RIDGWAY • TELLURIDE

Agenda item 9

# Memo

To: Mayor and Council Members  
From: James Mahoney  
Date: May 10, 2018  
Re: Public Comment Policy Options

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### **I. Background:**

Over the years the Town Council has adopted through the Rules of Conduct of Public Meetings Policy, a public comment policy; however, the Town has never strictly followed the public comment policy or brought attention to such the existence of such a policy. In addition that policy does not address many of the items it could and should address.

Therefore, the Town Council directed our office to prepare an analysis of the options available to Town Council regarding adopting and implementing a public comment policy which are set forth below.

### **II. Analysis:**

- a. What agenda items does the Town have to allow public comment on and can/should the Town allow for public comment on more items than required by law?

The only agenda items for which public comment must be taken are those that are considered “Public Hearings”. The two primary types of Public Hearings are quasi-judicial hearings and legislative hearings.

Quasi-Judicial hearings are where the Council or DRB are acting as the role of decision maker on an application to the Town. Examples are rezoning applications, conditional use applications, liquor license applications, PUD applications and other similar application hearings. Legislative hearings are where the Council is acting in its rule making capacity. Examples are adopting new ordinances, changing existing ordinances (including the CDC) annexations and master plans.

Other than these two examples, there are many other agenda items that don't fall into either category. In fact, your typical agenda has many items that are not public hearings, which brings us to the question of whether or not you should allow for public comment on other types of items.

In conducting a survey of communities across Colorado with the assistance of the Colorado Municipal League most communities only allow for public comment on public hearing items not all agenda items. However, they all have a length agenda item for public comment. The Mountain Village has a 5 minute item for public comment on "non-agenda" items, which is rarely used, whereas, other jurisdictions had at least a 45 minute public comment agenda item, where constituents are allowed to comment on all things other than public hearing items.

The idea of one public comment period rather than public comment on every item does have merit as it is an efficient way to receive public comment in one session on all items that are not public hearings as well as other non-agenda items. However, this would be a large change. The other option here would be to continue allowing comment on all action items regardless of whether they are public hearing action items or not.

b. What restrictions can and are placed upon public comment at Town Council and other Town meetings?

The basic rule is that any restrictions must be time, place and manner restrictions, which must be content neutral (i.e. only proponents or conversely only opponents can speak would be an unacceptable restriction). Restrictions on the time allowed for each individual speaker are the most common restrictions imposed by all jurisdictions that I have researched and so long as they are uniformly enforced such restrictions have been accepted by many courts as allowable time, place and manner restrictions.

However, it must always be content neutral and the Town must be very consistent in applying these rules so they are always content neutral in application as well.

Most communities have time restrictions. Most are in the 3-5 minute range as that is a acceptable time in getting a clear point across, allows for all public to be heard and keeps the meeting on course and running efficiently. Therefore, the Town Council may consider time restrictions on public comment; however, time restrictions should be consistent for every agenda item and not change from item to item. Therefore, if the Town Council determines 3 minutes or 5 minutes is the best time limit it should always be the same whether there are 2 comments or 10 comments for a particular item.

c. What are the best practices in adopting a policy, gaining compliance and enforcement of public comment policies?

Adopt a policy or ordinance governing public comment which includes content neutral time restrictions for all speakers, deals with aggregating time (i.e. one speaker

representing 10 people does not get 30 minutes based on 3 minutes per person), designates what type of items receive public comment (all or public hearings) and governs submission of written comments. Then stick to the policy. To allow for exceptions not only disrupts meetings, but also opens up claims that the adopted policies as practiced are not content neutral, but are rather being applied based on content whether it actually is or not.

The other major consideration is how to deal with written materials and visual aids. No community I saw allowed for visual aids for public comment. Only agendaized speakers were allowed visual aids and even then the visual aids had to be submitted by packet deadlines. All communities allowed for the submission of written comments (letters, pictures, presentations, etc...) but only those submitted by a certain deadline. A requirement that all written comments including presentations must be submitted by a date and time certain ahead of the meeting such as 48 hours prior to the Council Meeting. This was done for several reasons. Running an efficient meeting is one, allowing council time to consider information was another, fairness to all submitting comments and for IT reasons as plugging in a random data stick has very real possible virus and other IT issues. Thus Council should consider a written comment and presentation section of the policy.

As for enforcement that is a bit of a tricky issue and there were no perfect solutions that any other jurisdictions had, yet there were some good ideas. Enforcement options start with either adopting the public comment rules as an ordinance with penalties or simply as a policy resolution. With an ordinance there can be real penalties and the ability for an attending officer to remove an egregious offender. Without an ordinance there can be no real penalties other than through state law, which is not tailored directly for local public meetings. If you were to go the route of an ordinance it would need to be narrowly tailored and include findings along the lines of how such violations subvert significant governmental interests in productive public meetings and in ensuring that others have the opportunity to speak.

Other options include turning off the microphones and council simply adjourning the meeting if a speaker refuses to abide by the rules. The down side to these options is that it doesn't prevent the speaker from continuing to speak without the microphone option and adjourning the meeting disrupts the meeting which is part of the goal to avoid.

Additional strategies to effectuate the desired policy are to (a) list the rules on every agenda; (b) read the rules before every public hearing/ public comment agenda item; (c) post the rules at the public comment microphone/elsewhere in council chambers; and (d) installing some sort of timer that either rings loudly and/or flashes from a red light to green light at the expiration of time.

One compromise position would be to adopt an ordinance but only allow penalties and removal of a speaker if the Council has turned off microphones, adjourned the meeting and reconvened, yet the speaker continues to disrupt the meeting.

### III. **Conclusion:**

As you can see there are a number of issues to consider in crafting a good public comment policy with a number of directions that Town Council could go on this. However, the most important lesson I have come across in my research is to adopt a policy and be rigorously consistent in sticking to the policy. There are not only legal reasons for doing so, as it keeps the policy content neutral and avoids free speech issues, but consistency also sets an expectation of regular, efficient, inclusive and effective meetings.

Town Council should consider the following:

1. What items to allow public comment on other than public hearings or only allow public comment at public hearings and establish a public comment period for all other public comment?
2. What restrictions (i.e. time) should be imposed on public comment?
3. What should a written comment/presentation policy look like?
4. To ordinance or not?

With direction on these items we can prepare a public comment policy for consideration at your next meeting.