

RESOLUTION NO. 04 - 18

**CITY OF SOUTH LYON
OAKLAND COUNTY, MICHIGAN**

WHEREAS, the City Council of the City of South Lyon ("Council") finds that City Council meetings are an important forum for the expression of public comment regarding City business; and

WHEREAS, the Council further finds that when public participation at Council meetings is not structured according to reasonable rules, there exists an enhanced risk that discussions will center on topics not germane to the City's business, that some viewpoints will be disproportionately represented, that some potential speakers will be deterred from participating, that the meeting will take on a tone of incivility detrimental to effectively addressing City business, and that the meeting will not proceed in an efficient manner; and

WHEREAS, pursuant to Section 4.6 of the Charter of the City of South Lyon and the Michigan Home Rule City Act, being Act 279 of 1909, as amended, the Council may establish rules of procedure to control its deliberations;

NOW, THEREFORE, BE IT RESOLVED that the City Council adopts the following Rules of Conduct for Public Comment at City Council Meetings:

**City of South Lyon
Rules of Conduct for Public Comment at City Council Meetings**

A. Statement of Intent

It is the intent of the South Lyon City Council ("Council") that Council meetings be regulated as a limited public forum that is open to public comment relating to agenda items, City administration, and matters that are otherwise of public concern to the community. The Council asserts that it has interests in promoting orderly and efficient administration of Council meetings and the City's business, maintaining the public peace at Council meetings, and ensuring that comment offered at Council meetings advances the Council's information-gathering and decision-making functions. In furtherance of these interests, the Council adopts these Rules of Conduct for Public Comment at City Council Meetings ("Rules"). To the extent that these Rules regulate First Amendment activity, the Council recognizes that speech on matters of public concern offered in connection with a public body's information-gathering and decision-making processes is afforded the highest degree of First Amendment protection. These Rules are not intended to silence speech or prohibit expressive conduct based upon its content.

B. Public Comment Procedure and Rules of Decorum

- 1) Public Comment Limited to Designated Public Comment Periods. Except for agenda items for which a public hearing is required by law or has otherwise been scheduled by the City

Council, public comment shall only occur at times designated for "Public Comment" on the Council agenda. Two Public Comment periods shall be provided on each Council agenda. The first shall be scheduled as the first agenda item after "Approval of Agenda." The second shall be the last agenda item before "Council Comment."

- a. Public Comment Period Waiver. Public comment outside of a designated Public Comment period, including during the Council's discussion of agenda items, shall only be permitted upon a majority vote of the Council to approve a Public Comment Period Waiver allowing a person to speak at an alternate time.
 - i. Waiver Request. A waiver request may be initiated by a prospective speaker before or during a Council meeting, or by a member of Council wishing to have a prospective speaker recognized.
 - ii. Consideration of Waiver. The Council's grant of a waiver shall be supported by a finding that obtaining testimony from the prospective speaker would facilitate the Council's information-gathering and/or decision-making process, based on the prospective speaker's expertise, employment, connection with the subject matter being deliberated, or other factors identified by the Council. In general, the Council's consideration of a Public Comment Period Waiver shall be on a speaker-by-speaker basis, but nothing in these Rules shall be construed to prohibit the Council from holding a single vote to open any matter to all public comment.
 - iii. Waiver not Content-Based. The Council's decision to grant or deny a waiver shall not be based on the content of the prospective speaker's message. Where a subsequent prospective speaker requests a Public Comment Period Waiver to offer an alternative viewpoint on the same agenda item, the Council shall not unreasonably deny a waiver to that speaker if the Council finds the speaker to possess comparable expertise, employment, connection to the subject matter, or other characteristics the Council used to justify a waiver for a previous speaker. The Council may request a person to provide evidence of his or her credentials as a condition of considering a Public Comment Period Waiver request.
 - iv. Rules for Comment Pursuant to Public Comment Period Waiver. The Council may establish specific parameters for comment offered pursuant to each Public Comment Period Waiver to facilitate the purpose for granting the waver. In the absence of waiver-specific rules, these Rules shall apply.
- 2) Scope of Public Comment. Both Public Comment periods shall be open for discussion of agenda items and non-agenda items.
- 3) Decorum. Speakers shall deliver their comments in a manner that is respectful to the forum. No speaker shall engage in conduct that interferes with the Council's orderly and

efficient administration of Council meetings and the City's business, that is violent or can reasonably be perceived as violent, or that otherwise disturbs the public peace in violation of applicable City ordinances and other applicable laws. Speakers shall not be deemed to be in violation of these Rules solely based on the content of their speech where the speech is protected by the First Amendment and/or the where the law recognizes that the remedy for contested speech is a tort or criminal action after expression of the speech rather than a prior restraint (e.g. defamation, slander, falsehoods). Provided, that these Rules shall not be construed as limiting the ability of the Mayor, Council, and/or police to enforce these Rules against speakers whose comments are delivered in a manner that violates these Rules or other applicable ordinances and laws, or whose speech falls within the legal definition of obscenity, true threats, dangerous or inciting speech, or other any other category of speech that is not afforded full First Amendment protections.

- 4) Recognition of Speakers. Persons wishing to address the Council, including to seek a waiver, may only do from the podium and after being recognized by the Mayor. No person may call out from the audience. Only one speaker may occupy the podium at a time.
- 5) Identification of Speaker. At the start of a speaker's comment, the speaker shall provide his or her name and address for the record.
- 6) Public Comment to be Directed to the Mayor and Council. Speakers shall direct their comments and questions only to the Mayor and Council. Speakers shall not engage in direct dialogue with other persons attending the meeting. If a speaker raises a question for which the input of a person other than the Mayor or Council is required and the Mayor or Council find that addressing the speaker's question would facilitate the Council's information-gathering and/or decision-making process, the Mayor may invite the intended recipient of the question to the podium to address the question after the speaker has finished his or her comment. Upon recognition of a person to address the question, the speaker shall relinquish the podium to that person, and any follow-up by the speaker may occur only pursuant to these Rules and upon recognition by the Mayor.
- 7) Presentations Requiring an Agenda Item. Public Comment periods are not intended for presentations lasting longer than two minutes, which require materials to be added to the Council's agenda packet, or which will require audio/visual equipment. Speakers and/or groups who know or reasonably should know that their presentation will exceed two minutes, require additions to the agenda packet, or require audio-visual equipment, are expected to notify the City Clerk that they wish to be placed on the Council agenda according to the normal deadline for the City Clerk to finalize the agenda. In general, the option to appear on the agenda shall be limited to representatives of City departments, representatives of non-profit or other community organizations, and elected or appointed government officials seeking to address the Council in the performance of an official function. Provided, that the decision as to whether not to allow a speaker on the agenda shall not be based on an evaluation of the content of the proposed presentation. Any speaker whose request to appear on an agenda is denied by the City Clerk or is untimely may appeal the decision by appearing during the Public Comment period of the meeting

at which he or she wishes to speak and request a waiver from the Council to speak at a time other than Public Comment, or from the Mayor to exceed the time limit.

8) Time Limit. The time limit for each speaker during Public Comment is two (2) minutes per Public Comment period, subject to the following:

a. Timekeeper. Time shall be kept by the Mayor or his or her designee, or by a timer.

b. Time Expired; Completion of Comment. If the speaker's time has expired, and no waiver has been requested or granted, but it appears that the speaker is about to finish his or her comment, the Mayor may allow the speaker to finish the comment without the necessity of a waiver, provided that the speaker then leaves the podium after completing the comment and being reminded by the Mayor that his or her time has expired.

c. Time Limit Waiver. Upon the request of a speaker, the Mayor, in his or her discretion, may grant a Time Limit Waiver according to the following procedure:

i. Timing of Request. In general, if the speaker reasonably should know that he or she will require a waiver, he or she shall request a waiver at the start of his or her public comment. However, if it only appears during the speaker's comment that he or she will require additional time, he or she may request a waiver during or at the end of his or her comment period.

ii. Guidelines for Mayor's Discretion. The Mayor's discretion in granting or denying a Time Limit Waiver may be guided by considerations including but not limited to:

1. Whether the speaker reasonably should have known that his or her comments would exceed the time limit such that the speaker should have requested to be placed on the agenda;
2. The length of the meeting agenda;
3. The number of other people who wish to speak;
4. The speaker's compliance with these Rules and all other applicable ordinances, resolutions, and laws;
5. The extent to which the speaker's comment has generated questions or comments from the Council within the speaker's two-minute speaking period such that the speaker has not been able to raise all points that could have been raised within the two-minute period;

6. Whether one or more Council members request that the speaker be given an opportunity to respond to Council questions or comments raised after the speaker's time has expired;
 7. Whether the speaker's comments during the first two minutes have been repetitive;
 8. The extent to which continued comment would facilitate the Council's information-gathering and decision-making functions.
- iii. Waiver not Content-Based. A person seeking a Time Limit Waiver shall not be required to disclose the content of his or her comments as a condition of requesting the waiver. A decision to grant or deny a waiver shall not be based on an evaluation of the content of the speaker's comments or disagreement with the speaker's viewpoint where the speaker's comments are afforded First Amendment protection and do not put the Council at risk of violating other laws by allowing the comment (e.g. campaign finance law, employment law, privileged communications).
 - iv. Review of Waiver Denial. A decision of the Mayor to deny a Time Limit Waiver may be reviewed by the City Council at the request of a Council member as provided by Roberts' Rules of Order or other applicable rules.
- d. Duration of Waiver: When granting a waiver, the Mayor may provide any amount of time for extended comment to the speaker that is reasonable under the circumstances. The guidelines for the Mayor's original consideration of the waiver may be considered when establishing the extended time limit.
 - e. Independence of Public Comment Periods. Each Public Comment period or other instance of public comment within a meeting shall be mutually exclusive and independent of all others for purposes of applying these Rules.
 - i. A speaker may speak during both Public Comment periods for two (2) minutes each.
 - ii. The availability of two two-minute Public Comment opportunities per speaker within a meeting shall not be cited to justify a Time Limit Waiver during any single Public Comment period. For example, a Time Limit Waiver may not be requested or granted based on a promise by the speaker to not participate in the second Public Comment period, nor may a Time Limit Waiver be requested or granted based on a speaker having not participated in the first Public Comment period.
 - iii. The grant of a Time Limit Waiver to a speaker during the first Public Comment period shall not affect the speaker's ability to speak for two

minutes during the second Public Comment period, but may weigh against the grant of second Time Limit Waiver within the same Council meeting.

- iv. The grant of a Public Comment Period Waiver shall not affect the person's ability to speak during either Public Comment period.

C. Enforcement Procedures

- 1) Authority to Enforce. The Mayor shall have the power to enforce these Rules. The Council shall be authorized to review the Mayor's enforcement decisions as provided by Robert's Rules of Order and/or any other applicable Council rules.
- 2) First Warning. Upon identifying a person to be in violation of these Rules or any other applicable ordinances, resolutions, or laws, the Mayor shall issue a warning to the person that he or she is in violation of one or more rules and direct the person to redirect their conduct so as not to be in violation of the Rules. Where the violation relates to the timing or duration of a person's comment, the Mayor shall order that person to discontinue their comment until the Mayor or Council, as appropriate, has considered the speaker's request to be recognized, or for a waiver. If the speaker has not obtained the required recognition or waiver, the Mayor shall order the person to return to his or her seat.
- 3) Second Warning. If a person who has received an initial warning fails to abide by the Mayor's directive and continues to engage in conduct in violation of these Rules or other applicable ordinances, resolutions, or laws, the Mayor may issue a second warning and/or order the person to return to his or her seat. Provided, that the Mayor may choose to forego issuing a second warning and proceed directly to ordering other permissible remedies if the Mayor finds that the person's conduct poses an imminent threat to public safety, or has escalated so as to cause an immediate disturbance of the public peace at the meeting or to interfere with the orderly administration of the meeting.
- 4) Interference with a Public Meeting; Remedies. Any person who disturbs the public peace at a Council meeting by loud, boisterous, violent, or vulgar conduct, interferes with the Council's meeting, or who fails to comply with an order or directive of the Mayor requesting compliance with these Rules shall be deemed to be in violation of the Code of Ordinances of the City of South Lyon, including but not limited to Section 58-53 – Interference with conduct of business; interference with meetings of a public body – and shall be ordered removed from the meeting and/or ticketed in accordance with the Code of Ordinances.
- 5) Imminent Threat. Nothing in these Rules shall be construed to require the Mayor to provide one or more warnings prior to ordering the removal of any person who the Mayor, Council, and/or law enforcement officers reasonably perceive as creating an imminent threat to the safety of the Mayor, Council, or public.
- 6) Mayor Absent. In the absence of the Mayor, these Rules shall be construed to vest the powers and responsibilities of the Mayor in the Mayor Pro-Tem or the Council Member who is otherwise serving as chair of the meeting.

BE IT FURTHER RESOLVED, that provisions of any prior resolutions that regulate public comment at Council meetings shall be construed so as not to conflict with these Rules;

BE IT FURTHER RESOLVED, that provisions of any prior resolutions that regulate public comment at Council meetings and cannot be construed so as to avoid conflict with these Rules are hereby superseded and repealed by these Rules;

BE IT FURTHER RESOLVED, that if any division, section, subsection, clause, or phrase of this Resolution be declared by the courts to be invalid, the validity of the Resolution as a whole, or in part, shall not be affected other than the part invalidated;

BE IT FURTHER RESOLVED, that a copy of this Resolution or the text of the Rules promulgated by this Resolution shall be made available at each City Council meeting and may be made available to the public through any other means including but not limited to the City's website and any compilation of Council rules that may exist now or in the future;

BE IT FURTHER RESOLVED, that a summary of these Rules shall be included on each Council meeting agenda.

At a regular meeting of the City of South Lyon City Council, a motion was made by Council Member Kivell, supported by Council Member Parisien, to adopt the above resolution.

Ayes: 7
Nays: 0
Absent: 0

RESOLUTION DECLARED ~~(ADOPTED/FAILED)~~ on this 4 day of June, 2018.

CERTIFICATION

I certify that this resolution was duly adopted by the City Council of the City of South Lyon on June 4, 2018.

Lisa Deaton
City Clerk
South Lyon