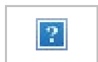
**From:** Karen MIller
**To:** Marilyn Ezzy Ashcraft; Malia Vella; Tony Daysog; Trish Spencer; Tracy Jensen
**Cc:** Lara Weisiger
**Subject:** [EXTERNAL] Revised rules of order
**Date:** Monday, June 17, 2024 9:22:46 PM

Dear Mayor and Council members,

I am writing to object to the rules for the Consent Calendar items in the Revised rules of order. I have been to Council meetings where there were multiple items on the consent calendar on which I would like to comment. While I appreciate the need for shortening the meeting, the 3 minutes for comment, do not allow for a citizen to comment on all the items on which they would like to comment. I would suggest that you either limit the number of items on the consent calendar or allow more time depending on how many items are on the calendar. Thank you.

**Regards,**

**Karen Miller**



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| **From:** | ACT |
| **To:** | Marilyn Ezzy Ashcraft; Tony Daysog; Malia Vella; Trish Spencer; Tracy Jensen |
| **Cc:** | Manager Manager; Yibin Shen; City Clerk |
| **Subject:** | [EXTERNAL] RE: June 4 agenda item 6-B-Amendment of Rules of Order |
| **Date:** | Monday, June 3, 2024 12:06:31 PM |

# *ACT*

## Alameda Citizens Task Force

**Vigilance, Truth, Civility**

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Dear Mayor Ashcraft, Vice Mayor Daysog and Council Members Vella, Spencer & Jensen:

ACT objects to language currently in Sections 4 and 5 of the Rules of Order and seeks amendments thereto. Amendment of both sections can be accomplished under the June 4 agenda item 6-B which is a reconsideration of the Rules approved by City C ouncil on Oct. 3, 2023, which contain extensive revisions of both sections.

**A. Objection to Section 4:**

*1. Inadequate definition of what items qualify for the Consent Calendar:* Section 4 states "Agenda items listed under the Consent Calendar are considered routine…". This vague standard allows the Agenda Setting Committee (ASC) to exercise unlimited discretion in determining the content of the Consent Calendar.

A question that arises with the current standard is as to what body the "remote" standard applies, City Council or the public. Since collective bargaining agreements are always placed on the Consent Calendar, we assume that the that the ASC applies the standard to City Council rather than the public that has had no previous exposure to it. **We believe that such a practice deprives the public of the transparency required by the Brown Act and is particularly grievous as these are long term contracts that constitute major portions of the city budget.**

To illustrate the issue further, we have reviewed the current agenda Consent Calendar. Items 5-A, B, E and F, approving minutes, paying bills, rebidding a construction contract, and awarding a low bid contract are routine items. However, 5-C, D, G and H are not.

5-C accepts a wide ranging communications report designed to enhance communication between staff and residents and improve operational efficiency. It is accompanied by a long staff report. If ever an item demanded full exposure and explanation to the public and to City Council this is it. Burying in the Consent Calendar as a “routine” item defies logic.

5-D seeks approval of a one year $270,00 contract to The Village of Love Foundation to provide homeless outreach services. This is a not a low bid contract, but a discretionary choice between two organizations. It is not “routine”.

5-G increases the executive management salary schedule 22% to the General Manager of AMP based on a review by Human Resources and results in a $63,000 annual increase. There is no indication that this issue has ever been presented to City Council or the public before. It is not “routine”.

5-H purports to be a public hearing required by law to determine if a majority of payers object to the current practice of including their Water Quality and Flood Protection Fees in their property tax bills, rather than direct billing. While this is “routine” in the sense that it confirms a long existing billing system, how can the city be fulfilling its legal obligation of providing a public hearing to objectors if it is placed in the Consent Calendar?

**We propose the amendment of Section 4 to provide a clear unambiguous definition of what items qualify for the Consent Calendar.** We suggest that it should be limited to approval of minutes, bill payments, low bid contract awards, rebidding of city work contracts, extending existing contracts on substantially the same terms, and any other items which have previously been acted upon in the regular agenda, *other than second readings of new ordinances which are required by law and should not be on the Consent Calendar.* We are open to other approaches, but the current Rule allows any item to be placed on the Consent Calendar at the unfettered discretion of the ASC. It is clearly inadequate and should be amended.

We also suggest that every staff report for a Consent Calendar item contain a brief statement of the ASC’s basis for determining a matters placement on that Calendar.

2. *Unlawful restriction of public comment to one comment on the entire Consent Calendar.* Section 54954.3 of the Brown Act requires the City Council to provide an opportunity for public comment on any item on the agenda. While subsection Section 54954.3 (b) (1) allows City Council to set reasonable regulations, it is unreasonable to limit a speaker to the same time limit to speak on one regular agenda item to multiple items on the Consent Calendar. **As was the case in prior administrations, the same time limits should apply to each individual item on the agenda.**

We recognize that you are burdened with very long meetings and need to find ways to operate more efficiently, but efficiency should not be at the cost of placing items on the Consent Calendar that are not "routine" and then giving the public inadequate time for comment thereon.

**B. Objection to Section 5:**

At the end of Section 5 it is stated that "speakers shall avoid personal attacks on members of the Council, staff or public." "Shall" has been uniformly applied by our courts as mandatory language. This broad language violates Section 54953 of the Brown Act which requires the allowance any public comment on matters "within the subject matter jurisdiction of the legislative body" Federal courts in California have determined that the First Amendment and the California Constitution, article I, section 2 protect the right of private citizens to criticize the conduct of government officials during public comment at open meetings. *Baca v. Moreno Valley Unified School District, 936 F. Supp. 719 (1996); Leventhal v. Vista Unified School District, 973 Fed. Supp. 951 (1997)* Also see *Brown Act Primer Sec. IV (H)* https://firstamendmentcoalition.org/facs-brown-act-primer/

*"*Speech Criticizing a District Employee, Even If Later Proved to Be Defamatory, Is Protected by Both the California and Federal Constitutions from Government Censorship and Prior Restraint*" Baca v. Moreno Valley USD, Supra.*

While both of these cases involve the allowance of criticism of employees of the municipal body, notwithstanding their privacy rights, they certainly are applicable to City Council members. While one of ACT's objectives is to promote civility, we cannot support the violation of constitutional rights to free speech, even if uncivil.

The Mayor has allowed criticism of herself and other Council Members as recently as the last City council meeting on May 21. However, the current express prohibition of personal attacks of Council Members or staff is too broad and inhibits the exercise the public's free speech right to criticize a Council Member or other City official's conduct in office. It should be deleted from the Rule. A provision limiting public comment to matters within the subject

matter jurisdiction of the City Council could be added. This would eliminate comments that were purely personal and unrelated to the city's subject matter jurisdiction.

Sincerely,

Alameda Citizens Task Force Board of Directors