

NEWS

# Criticized for restricting public comment, city council vows to respect the Brown Act

It's not the first time San Diego has faced accusations of violating public transparency laws.



People testify during public comment on the city's homeless encampment ban before the San Diego City Council on Tuesday, June 13, 2023. (Nalvin C. Cenedia / The San



By **JERRY WU** | The San Diego Union-Tribune

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At a San Diego City Council meeting this summer, the chamber was a sea of navy blue from the early morning hours. Swaths of the city's police force had arrived en masse. Even Mayor Todd Gloria showed up.

The day was meant to be ceremonial, or at the very least symbolic. Fronting the council agenda on June 4 was a proclamation declaring the date Police Chief David Nisleit Day. After 36 years with the force, his last six as police chief, Nisleit would be donning his navy blue uniform one last time that week.

One by one, city officials from Councilmember Marni von Wilpert to Gloria took turns speaking on Nisleit's legacy. And the outgoing chief himself gave a few but lasting words to wrap up his tenure: "I will continue to love this city, but I will be on the sidelines rooting for all of you."

But on the sideline elsewhere, an undercurrent of frustration began to brew.

Unlike for other items on the agenda, public testimony was not permitted before or during the presentation of the proclamation.

That drew the ire of a group of community members who suggested the council was violating the Brown Act, California's open meetings law. Former state Assemblymember Lori Saldaña, one of those barred from commenting, later threatened to sue the city.

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In a resolution passed Tuesday evening, the city reiterated its “unconditional commitment to cease, desist from, and not repeat any act preventing public testimony on items presenting proclamations appearing on the council’s agenda as required by the Brown Act.”

When presenting the resolution, Assistant City Attorney Leslie FitzGerald said that the motion was intended “to avoid unnecessary litigation” without admitting any violation of the Brown Act by the city. No lawsuit has yet been filed, she added.

Out of the attendees, few seemed swayed.

“It’s a total disregard for the public’s right to simply express dissent or support,” Saldaña said. “It’s as hollow and empty as (the city’s) commitment for our right to speak.”

Nearing the end of the day, only a few people remained in the queue for public comment. But among those left, one message was consistently brought forth:

“I hope that you truly do have an unconditional commitment to California law and the Brown Act,” said Susan Baldwin, a retired San Diego Association of Governments planner.

The City Attorney’s Office declined to comment on the city’s decision to propose the resolution.

In 2017, the Center for Local Government Accountability sued the city for not allowing public comment on non-agenda items, including ceremonial proclamations. The city would ultimately pay the center \$70,000 to settle the lawsuit.

The city is now fighting another lawsuit, filed in 2022, by a group that says it “suffered interference or reprisal” by officials during public comment sessions. Among those represented by the plaintiff was Saldaña.

An email obtained by The San Diego Union-Tribune shows that ahead of the June meeting, staff from Council President Sean Elo-Rivera’s office had stipulated that there would be no public comment on the “ceremonial items” on the agenda that day.

Coming up soon at the council may be a proposal to eliminate public comments by phone and Zoom during council meetings. The item was postponed from a recent committee hearing.

Elo-Rivera said it would streamline meetings and noted that other cities and public agencies have made similar moves, after adopting virtual public comment earlier in the pandemic.

But his effort has already been met with steady backlash from critics who call it an intentional effort to curb public comment. Elo-Rivera pushed Wednesday’s hearing on the proposal with the council’s Rules Committee to September so that more time can be given to discuss the item through the next meeting.

During public comment on Tuesday, Baldwin suggested that the city should reconsider any such proposal before being cut off and told to stick to the pertinent agenda item.

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