



## Office of the City Attorney

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### Memorandum

To: Common Council  
From: Brian Running  
Re: Public Comment

This is a follow-up to Tuesday night's discussion about public comment and the Council Rule that prohibits any response from the Council. The current rule is based on obsolete law, so there is an opportunity to review the policy in light of current state law and make a change if the Council feels it is appropriate.

Some basics:

- Public comment is not required by state law, and it's up to municipalities if they even want to allow it at all. Some municipalities do not allow public comment at meetings.
- Council response to public comment previously was generally regarded as illegal under the Open Meetings law. Since public comment is unpredictable, it's impossible to give notice on an agenda of the topic, and the Open Meetings law requires that the public and the media be given notice of anything that will be considered for action at the meeting.
- However, the Attorney General has issued advisory opinions that if an agenda provides a general notice that "other matters authorized by law" might come up at the meeting, then matters that couldn't be anticipated and are not of great importance could be discussed even if they are not specified in the agenda. So, if a member of the public raised an issue for the first time at a meeting and the issue was relatively minor, the AG opined that it could legally be discussed by the Council. If the matter was urgent, action could even be taken on it.
- In recognition of this opinion, the legislature in 1997 passed a bill that added two provisions to Chapter 19 of the statutes: One, that the agenda of a public meeting could include a period of public comment; and two, that during the period of public comment the governmental body can discuss any matter raised by the public. These appear in Wis. Stat. §19.84(2) and §19.83(2).

Current Council Rule 2.5 reads:

**Council May Not Respond to Comment.** Because Wisconsin's Open Meetings law requires an agenda of discussion topics be given to the public prior to meetings, and that items that do not appear on the agenda may

not be discussed, members shall not respond to, or debate, matters raised during public comment.

As you can see, Rule 2.5 does not accurately state the current law. Items *can* be discussed that don't appear on the agenda, as long as they are raised by the public during public comment. The matters can only be *discussed*, and no action can be taken. Action on a matter requires a specific agenda entry.

One concern with allowing discussion of public comment is that there not be a back-and-forth debate, which could escalate and go in undesirable directions. In my opinion the best option for allowing discussion would be that answers could be provided to questions that are easily answered, and that matters that have real merit and should be acted on are referred to an appropriate committee for inclusion on a future agenda. That way, the public commenter doesn't feel like they've been ignored or snubbed, and they go away with an answer or the knowledge that their issue is going to be considered. Discussion would take place only after comment is closed, to prevent back-and-forth with the public.

So this is my proposal:

- If a citizen raises a question, and there's an answer available from the Council or an attending staff member, the answer can be provided on the spot.
- If a citizen raises a point that merits consideration, then there can be discussion by the Council and a referral to an appropriate committee can be made.
- The Mayor can ask for clarification from the commenter if necessary for a good understanding of the point being raised.
- All comments and Council discussion are directed to the Mayor, there is no communication directly with commenters. This is the general rule at all times during every meeting, of course.
- The discussion and referral would then take place after the commenter has finished and taken their seat. After the comment is complete, the Mayor would then ask the Council if there is any discussion or a referral.

The Rule could look like this:

**Council Response to Comment.** During public comment, Council members may not address commenters directly, and shall direct all responses or requests for clarification to the Mayor. The Mayor may ask commenters for clarification, and may direct commenters to appropriate persons for answers to questions. After public comment is complete, the Council may discuss matters raised by the public, and make referrals to appropriate committees for further consideration and possible action after appropriate notice at future meetings. The Council may not take any other action concerning matters raised during public comment until the matters appear on an agenda for a properly-noticed open meeting.

This is not the only option, of course, and is offered as a template for discussion at a future Council meeting. Feel free to send me your comments, but as always, do not discuss this among yourselves and do not "Reply All."