

AWC DEIB Forum: Hijacked by Hate

Legal Considerations

Jill Dvorkin, MRSC Legal Consultant

Council Meetings & Public Comment

- Council authorized to establish rules of conduct and decorum for its meetings
- **Public Comment = Limited Public Forum**
 - Reasonable Time, Place, & Manner Restrictions
 - Viewpoint neutral
 - Clear, not vague
 - Not overly-broad

Open Public Meetings Act – RCW 42.30.240

- Public comment required at or before every regular meeting where final action is taken
- Can be written or oral
- Need not allow remote comment unless accommodation requested, and oral comment allowed at in-person meeting (RCW 42.30.240(2))
- RCW 42.30.050 authority to clear a meeting if disruption renders orderly conduct infeasible

OPMA, RCW 42.30.240(4):

Nothing in this section diminishes the authority of governing bodies to deal with interruptions under RCW 42.30.050, limits the ability of the governing body to put limitations on the time available for public comment or on how public comment is accepted, **or requires a governing body to accept public comment that renders orderly conduct of the meeting unfeasible.**

Acosta v. City of Costa Mesa, 718 F.3d 800 (9th Cir. 2013)



“Actual Disruption” of meeting required.

“Actually disturbing or impeding a meeting means actual disruption of the meeting; a municipality cannot merely define disturbance in any way it chooses, e.g., it may not deem any violation of its rules of decorum to be a disturbance.

“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

Acosta v. City of Costa Mesa, 718 F.3d 800 (9th Cir. 2013)



Council rule deemed unconstitutional:

No person shall make any personal, impertinent, profane, insolent, or slanderous remarks.

Court looked favorably upon a rule that stated:

It shall be unlawful for any person in the audience at a council meeting to do any of the following ... (1) Engage in disorderly, disruptive, disturbing, delaying or boisterous conduct, such as, but not limited to, handclapping, stomping of feet, whistling, making noise, use of profane language or obscene gestures, yelling or similar demonstrations, ***which conduct substantially interrupts, delays, or disturbs the peace and good order of the proceedings of the council.***

First Amendment Not a Shield for Disruptive Behavior



Steinburg v. Chesterfield County Planning Comm’n, 527 F.3d 377 (4th Cir. 2008)

“Officials presiding over such meetings must have discretion... to cut off speech which they *reasonably* perceive to be, or imminently to threaten, a disruption of the orderly and fair progress of the discussion, whether by virtue of its irrelevance, its duration, or its very tone and manner.”

State v. Patterson, 196 Wn. App 451, 460, 389 P.3d 612, 616 (2016)

“A person generally has a free speech right to make his or her views known, but the rubric of free speech does not include the intent to substantially interfere with a meeting.”

Strategies to Handle Hate Speech



- Plan ahead
- Be clear on the city's goals for public engagement
- If needed, amend council rules (consult with City Attorney!)
- Train staff and officials
- Clearly explain rules and expectations to public
- If disruption occurs, consider having a statement prepared that disavows hateful rhetoric

How Have Other Jurisdictions Responded?

- Updating Council Rules
 - Limiting comment to items on agenda
 - Requiring 24-hour advance registration for remote comment
 - Defining what constitutes an actual disruption
 - Identifying who has authority to interrupt/cut-off speakers
- Scripts for presiding officers and others to interrupt disruptive speech
- Training staff/officials on both technology and process to address disruptions

Thank You!

