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# Controlling Disruptive Public Speakers At Open Meetings

by Terence R. Boga

[T]he nature of a council meeting means that a speaker can become “disruptive” in ways that would not meet the test of actual breach of the peace or of “fighting words” likely to provoke immediate combat.

— Ninth Circuit Court of Appeals in *White v. City of Norwalk*

Public comment at open meetings of a city council is a cherished element of local government. Ensuring that public speakers do not disrupt the orderly conduct of such meetings, while respecting free speech rights, is a key responsibility of the city council.

*continued on page 43*

## Looking for Footnotes?

A fully footnoted version of this article is available online at [www.westerncity.com/articles](http://www.westerncity.com/articles).

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## Public Comment Rights Under the Brown Act

At a regular meeting, a public speaker generally has a Brown Act right to address any item that is of interest to the public and is within the city council's subject matter jurisdiction. Moreover, a public speaker is entitled to comment on an agenda item before or during the city council's consideration of the item. Some municipalities satisfy these requirements by designating a single public comment period for agenda and non-agenda items at the start of a meeting. Others allow public comment as each agenda item is called and establish a special period for public comment on non-agenda items.

There is one situation in which a regular meeting agenda need not provide an opportunity for members of the public to address the city council on an item. That situation arises when three criteria are met: 1) the item has already been considered by a committee composed exclusively of city council members; 2) members of the public were given the chance to address the committee on the item before or during the committee's consideration of it; and 3) the city council determines that the item has not been substantially changed since the committee heard the item.

At a special meeting, a public speaker only has a Brown Act right to address items that have been described in the notice for the meeting. As with a regular meeting, though, a public speaker must be allowed to address agenda items before or during the city council's consideration of the item.

## Statutory Authorization for Rules of Decorum

The Brown Act authorizes each city council to adopt "reasonable regulations" to ensure that the intent of the statute's public comment provisions is carried out. Such regulations can include, but are not limited to, limits on the total amount of time allocated for public testimony on particular issues and for each individual speaker. However, the regulations cannot prohibit public criticism of the city

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*The cornerstones of enforceable rules of decorum are reasonableness and viewpoint neutrality.*

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*City council members must be prepared to tolerate coarsely phrased criticism of themselves and the city's policies, procedures, programs, services and employees.*

J O B O P P O R T U N I T I E S

## General Manager Mesa Consolidated Water District Costa Mesa, CA



The Mesa Consolidated Water District (Mesa) serves over 110,000 customers in the City of Costa Mesa, parts of Newport Beach, unincorporated sections of Orange County and the John Wayne Airport. Governed by an elected five-member Board of Directors, the District is supported by an annual operating budget of over \$25 million and 68 employees. The District office is located within the City of Costa Mesa.

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council's acts or omissions, or of the city's policies, procedures, programs or services.

City councils of general law cities have additional authorization for rules of decorum. A separate statute permits such bodies to establish rules of conduct for their proceedings, and to punish any person for disorderly behavior at a meeting.

### Court-Approved Rules of Decorum

A municipality need not reinvent the wheel when adopting rules of decorum for its meetings. Sixteen years ago, the Ninth Circuit Court of Appeals upheld the validity of the following ordinance in the landmark case of *White v. City of Norwalk*:

Each person who addresses the council shall not make personal, impertinent, slanderous or profane remarks to any member of the council, staff or general public. Any person who makes such remarks, or who utters loud, threatening, personal or abusive language, or engages in any other disorderly conduct which disrupts, disturbs or otherwise impedes the orderly conduct of any council meeting shall, at the discretion of the presiding officer or a majority of the council, be barred from further audience before the council during that meeting.

Norwalk had construed the ordinance as allowing ejection only if a person's speech actually disrupted, disturbed or otherwise impeded the meeting. Based on that narrow interpretation, the court ruled that the ordinance was not too vague or overbroad in scope.

### Public Criticism of Employees

Some local agencies have adopted rules of decorum designed to shield agency employees from personal attacks by public speakers at open meetings. Such rules of decorum commonly are justified on the grounds that they protect privacy and other rights of employees. Despite these laudable purposes, however, such rules of decorum have not fared well in litigation.

For example, one school district established a policy stating that no presentation in open session at a school board meeting shall include charges or complaints against a district employee regardless of whether the employee is identified by name. A federal district court concluded that the policy most likely violated First Amendment free speech rights and issued a preliminary injunction preventing its enforcement.

A different school district established a bylaw prohibiting complaints against any district employee at an open meeting of the school board without the employee's consent. Another federal district court ruled that the policy violated First Amendment free speech rights and issued a permanent injunction preventing its enforcement.

**The Default Option: Penal Code Section 403**

The lack of formally established rules of decorum does not mean a city council is powerless to deal with disruptive public speakers at open meetings. Penal Code



*Abusive behavior and insulting remarks are not acceptable or appropriate in a public meeting, and city councils can adopt rules of decorum to prevent personal attacks by speakers at public meetings.*

Section 403 offers a “default” enforcement option. With some exceptions not relevant here, that statute makes it a misdemeanor for someone to willfully disturb or break up a lawful assembly

or meeting unless the person has legal authority to do so.

A recent case involving the Albany School District illustrates the type of conduct

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citable under Penal Code Section 403. During the public comment period of a school board meeting, a public speaker named McMahon complained that high school students were leaving drug paraphernalia, alcohol bottles and other trash in the neighborhood around the campus.

To underscore his point, McMahon spread a tarp on the floor and dumped two 13-gallon bags of garbage, some of which spilled onto the floor of the elementary school room in which the meeting was taking place. Police officers eventually removed him from the meet-

*A city council has considerable latitude to establish and enforce rules of decorum to control disruptive public speakers at open meetings.*

## J O B O P P O R T U N I T I E S

### 311 Director, City and County of San Francisco, CA

Known as the "City by the Bay," the City of San Francisco serves as the center for business, commerce and culture on the West Coast. The City is in need of a dynamic and enthusiastic individual to lead their new 311 Customer Service Call Center. Acting as a customer service center, the new Call Center receives public calls for information and requests for government services and acts as a single point of contact for all non-emergency City services. The ideal candidate will possess not only a strong customer service orientation, but also the ability to transfer the vision of quality customer service to all staff and City Departments. The new 311 Director should possess strong leadership skills. Someone who is politically savvy, yet apolitical will be valued. A creative problem solver who does not get discouraged by roadblocks will succeed in this position. Candidates should possess seven years of experience performing professional and/or administrative level duties, performing complex policy analysis, with at least two years of management experience. The equivalent to a Bachelor's Degree with major coursework in accounting, finance, business, public administration, public policy, social sciences, psychology, education, communications or a closely related field is required. A Master's Degree may be substituted for one year of the required experience. The salary range for the 311 Director is \$114,582-\$146,224 (this could be increased based upon the candidate's background and/or experience). The City also offers an excellent benefits package. If you are interested in this outstanding start-up opportunity, please submit a resume to **Regan Williams, Bob Murray and Associates**, 1677 Eureka Road, Suite 202, Roseville, CA 95661, (916) 784-9080, (916) 784-1985 fax, or e-mail [apply@bobmurrayassoc.com](mailto:apply@bobmurrayassoc.com). **Filing Deadline: December 1, 2006.** A detailed brochure is available.



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City application and detailed resume required. Application materials are available at: 1825 Strand Way, Coronado, CA 92118, (619) 522-7302, [employment@coronado.ca.us](mailto:employment@coronado.ca.us), or at [www.coronado.ca.us](http://www.coronado.ca.us). Filing deadline: 5:30 p.m. on Monday, December 11, 2006. EOE.



ing and issued a citation under Section 403, but criminal charges were not filed. McMahon then sued the school district, its board members and superintendent for false arrest and other claims.

The California Court of Appeal ultimately affirmed a trial judgment against McMahon. The court noted that a "jury could reasonably have determined that it is self-evident that dumping garbage in a room where children eat lunch violates the custom or usage of the board meetings, obviating the need for a warning or request to stop."

#### Conclusion

A city council has considerable latitude to establish and enforce rules of decorum to control disruptive public speakers at open meetings. The cornerstones of enforceable rules of decorum are reasonableness and viewpoint neutrality. Even with rules of decorum in place, city council members must be prepared to tolerate coarsely phrased criticism of themselves and of the city's policies, procedures, programs, services and employees.

Of course, no city council should ever be confronted with a situation where a person or group of people willfully interrupts a meeting such that orderly conduct of the meeting is unfeasible and order cannot be restored by their removal. Should that worst case scenario occur, however, the city council has Brown Act authority to "clear the room" and continue in session. ■