ACLU
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Washington

Know Your Rights Regarding Public Comments and Other Speech at Local Government Meetings

1. **Do local government bodies[1] like city or county councils or county board of commissioners need to provide public comment periods and allow members of the public to speak at regularly scheduled official meetings?**

   In the State of Washington, the Open Public Meetings Act (OPMA) requires that local government governing bodies, and some other specified government entities, open "regular" and "special" meetings to the public. RCW 42.30.030. The OPMA is codified in RCW 42.30. While it is not obligatory for legislative bodies subject to OPMA to provide periods of public comment, it is general practice to do so.[2] If governing agencies do provide a period for public comment, they are permitted to set certain limitations against "disruptive" behavior, and they can limit the amount of time per speaker plus have other neutral rules; but they are not allowed to violate first amendment rights by having different rules depending on the viewpoint of the speaker. *Norse v. City of Santa Cruz*, 629 F.3d 966 (9th Cir. 2010).

2. **If a public comment period is provided, can the body limit the discussion to certain subjects?**

   Certain local government meetings, including city council meetings, when open to the public, are considered "limited public forums." This means that a city council can enact viewpoint-neutral "place, time, and manner" restrictions on speech if there is a legitimate and compelling government interest. *Steinburg v. Chesterfield Cty. Planning Comm'n*, 527 F.3d 377 (4th Cir. 2008). Local government bodies *can* limit speech to certain topics (e.g. agenda items) and timeframes as long as such restrictions are not unreasonable and as long as the restriction is not based on disagreement with a speaker's viewpoint.

   In *Steinburg*, the Fourth Circuit found that the defendant planning commission had a basis for ejecting Steinburg, a local citizen, from a public meeting for bringing up matters not within the scope of the agenda item at hand. *Id.* The Court said that "imposing restrictions to preserve civility and decorum [are] necessary to further the forum's purpose of

[1] For purposes of this document, local government bodies refers to city councils, county councils or boards of county commissioners, and committees of those bodies.
[2] https://www.atg.wa.gov/open-government-resource-manual/chapter-3

conducting public business." *Id.* at 385. However, it is important to note that courts also require actual disruption in order to exclude a person from a meeting.

3. Can a local government body provide for public comment but restrict obscenity or disruptive conduct by speakers?

If speakers are being actually disruptive or threatening at any time during public hearings, their speech may be restricted by the governmental body. What constitutes disruptive speech remains unclear. In *Eichenlaub v. Twp. of Ind.*, 385 F.3d 274, 281 (3d Cir. 2004), the plaintiff, Eichenlaub was deemed disruptive for being "repetitive and truculent" and for interrupting the chairman of the meeting. *Id.* at 281. The Third Circuit Court of Appeals found that Eichenlaub's first amendment rights were not infringed upon when he was ejected from a general "citizens forum" for his interruption of the meeting chairman. *Id.*

On the other hand, a Nazi salute during a city council meeting is not deemed disruptive by itself. Rather, more substantial disruptive behavior must be exhibited in order to lawfully restrict or restrain a speaker's conduct. In *Norse v. City of Santa Cruz*, 629 F.3d 966 (9th Cir. 2010), Norse was lawfully rejected for not only exhibiting the Nazi salute but *also* for approaching the podium and arguing with a city council member after the public comment period ended. *Id.* at 1.

Concerning the use of expletives while expressing political speech, the Sixth Circuit has found that it is unlawful to remove a speaker for using the words "god damn" at a township board meeting. *Leonard v. Robinson*, 477 F.3d 347 (6th Cir. 2007). In *Leonard*, the court found that the use of profanity intertwined with political speech is a fundamental protection under the first amendment. *Id.* at 360. Thus, Leonard was not lawfully arrested when he said "god damn" at the board meeting.

4. Can a local government body allow some members of the public to speak but not others?

A local government body, such as a city council, can restrict speech at public meetings when it refers to the timing, location, and manner of the challenged speech. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 103 S. Ct. 948, 74 L.Ed.2d 794 (1983). Any restrictions placed on speech must be reasonable and tied to a compelling state interest. *Id.* at 45, 103 S. Ct. at 955. However, legislative bodies cannot suppress expression simply because public officials do not agree with a certain viewpoint. *Planned Parenthood of S. Nev., Inc. v. Clark Cty. Sch. Dist.*, 941 F.2d 817 (9th Cir. 1991). If a legislative body is restricting a member of the public from speaking due to specific viewpoints, such actions are unconstitutional. *Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266 (9th Cir. 1995).

Similarly, the Supreme Court of the United States has held that exclusion of certain speakers from forums like local government body meetings is unconstitutional. In *Madison*

Joint School Dist. v. Wisconsin Employment Relations Commission, 429 U.S. 167, 97 S. Ct. 421, 50 L.Ed.2d 376 (1976), the Supreme Court held that a nonunion schoolteacher who spoke up at a board of education meeting regarding a collective bargaining agreement they were not a part of could not be excluded. The pushback to this particular teacher's speech came from *unionized* schoolteachers' belief that *nonunionized* school teachers should not affect collective bargaining agreements they are not a part of. However, the Court was clear:

"To permit one side of a debatable public question to have a monopoly in expressing its views to the government is the antithesis of constitutional guarantees. Whatever its duties are as an employer, when the board sits in public meetings to conduct public business and hear the views of citizens, it may not be required to discriminate between speakers on the basis of their employment, or the content of their speech."

Ultimately, one must look at whether a local government's decision to hear comments of one speaker over that of another are related to specific viewpoints. If such a preference is present, then such a restriction is not neutral and is likely unconstitutional.

5. Are local government bodies allowed to limit a public speaker's time? What is a reasonable time limit?

Imposing a time limit on a speaker during a public comment period is permissible within the "reasonable time, place, and manner" standard. *Shero v. City of Grove,* 510 F.3d 1196, 1203 (10th Cir. 2007). Again, as long as time limits are content- and viewpoint-neutral and continue to serve a "compelling government interest," then local government bodies such as city councils may employ them in their meetings. *Wright v. Anthony,* 733 F.2d 575, 577 (8th Cir. 1984). For example, a city council may provide a total public comment period of 30 minutes and restrict speakers to 3-5 minutes each, or less, depending on the amount of time available and the number of speakers. However, a city council may not give one speaker in support of a certain legislative decision 5 minutes, and another, against a certain legislative decision, 3 minutes.

6. Can a legislative body prohibit or place size limits on signs or other expressive paraphernalia?

Federal and state law is unclear on whether size limits can be imposed on political belongings such as buttons, signs, and clothing. For example, can a member of the public display a political sign during a city council meeting? There is no direct answer. However, the legal principle remains that the government may enforce *reasonable* time, place, and manner restrictions which (1) are unrelated to speech content; (2) are narrowly tailored to serve a significant governmental interest; and (3) allow alternative ways of communicating the same information. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45,

103 S. Ct. 948, 74 L. Ed. 2d 794 (1983). Thus, any restriction must be reasonable and tied to a compelling government interest. Such restrictions must also be viewpoint-neutral. For example, a city council may not place political sign or clothing restrictions specifically because an attendee favors a certain political party. But if signs are limited to a certain size that does not block meeting attendees' view, that is a neutral and permissible rule.

Note: Public local government meetings typically follow Robert's Rules of Order to facilitate their meetings. The rules originated in 1876 with U.S. Army Major Henry Martyn Robert. Major Robert created these rules as guidelines for parliamentary procedure. Robert's Rules continue to be widely used by local governments in order to run meetings effectively.[3]

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[3] Saul Levmore, "Parliamentary Law, Majority Decisionmaking, and the Voting Paradox," 75 Va. L. Rev. 971 (1989).