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BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

What the Bleep!:

The People's Business and the Limits of Public Comment

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Disruptive Meetings



- [LA City Council](#)

- [LA County Supervisors](#)

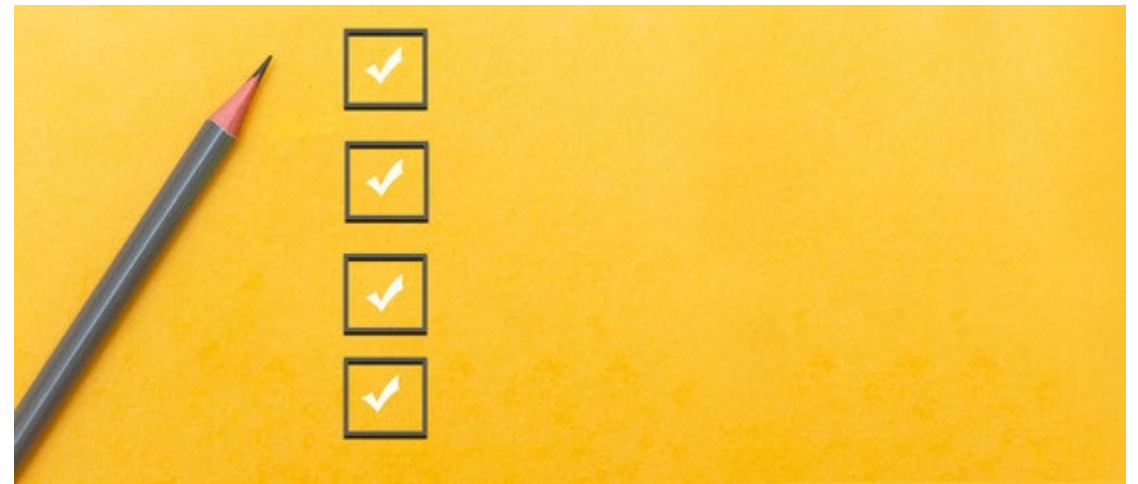
Before we begin...



- How many of you have experienced public meetings where members of the public are disruptive?
- Anyone willing to share a particularly difficult situation?
- How many of you feel that you handled it well?
- How many feel they could have handled it better?
- Let's talk about the applicable rules and best practices
- **Legal Disclaimer

Overview

1. History of the Brown Act
2. Purpose of the Brown Act
3. Right to Access/Public Comment
4. Limits of Public Comment
5. Mitigating Disruptive Conduct
6. Disruptive Meetings
7. Best Practices
8. Dealing with Specific Types of Disruptions by Members of the Public



The Ralph M. Brown Act



- In late 1951, San Francisco Chronicle reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series on “Your Secret Government” that ran in May and June 1952.

The Ralph M. Brown Act



- Out of the series came a decision to push for a new state open meeting law.
- Assembly Member Ralph M. Brown carried legislation.
- The “Brown Act”, has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws—such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

Purpose of Brown Act

- To ensure that almost all aspects of the decision-making process of legislative bodies of local agencies are conducted in public and open to public scrutiny.
- “The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.” (Gov. Code 54950.)



The Right to Access



- Two key parts of the Brown Act have not changed since its adoption in 1953:
- “In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.”
- “The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

The Right to Public Comment

- At every regular meeting, members of the public have the right to directly address the body on any item of public interest if that item is under the jurisdiction of the body.
- For agenda items, the public must be given an opportunity to comment before or during the body's consideration of the item.
- At special and emergency meetings, members of the public have the right to address the body about any item that is listed on the agenda.



The Right to Public Comment

- Citizens have an enormous first amendment interest in directing speech about public issues to those who govern their city
- Reasonable regulations (i.e. amount of time) permissible
- Cannot prohibit “public criticism of the policies, procedures, programs, or services” of the City, or the acts or omissions of the legislative body”



The Right to Public Comment

- Public comments on general policies or services provided by the City, or on the nature of any Councilmember's acts or omissions, must always be allowed unless the commenter is, through their conduct, creating an actual disturbance of the meeting
- Disruptions must be managed consistent with First Amendment Principles
- Court have concluded that City Council meetings are limited public forum for purposes of First Amendment analysis



Limits on Public Comment



- Limited Public Forum- Courts have found based on the facts
 - A City Council meeting is a governmental process with a governmental purpose. The Council has an agenda to be addressed and dealt with.” As a result, the City Council has a legitimate interest in conducting efficient, orderly meetings.
 - A city council may stop a speaker from engaging in irrelevant (e.g., speech not on the topic of an agenda item) or repetitious speech without offending the First Amendment.
 - In furtherance of a city’s efficiency interest during public meetings, courts have also upheld various, limited restrictions on a community member’s right to speak such as time limits or a requirement that speech be directed at the body or chair.

Limits on Public Comment

- A city council may NOT extinguish all First Amendment rights at a public meeting
- A member of the public may not be ordered removed from a meeting merely for making an inflammatory gesture, such as a “Nazi salute” unless this conduct is actually disruptive
- What about profanity?



Limits on Public Comment

- Remember-- the purpose of public comment
 - To convey the speaker's ideas to elected officials on issues within the subject matter of the legislative body,
- Cases from the Ninth Circuit suggest that at a city council meeting a presiding officer may not remove a community member based on *solely* on profane speech.
 - In light of other instances where such speech has been protected, and
 - In light of the Brown Act's express commitment to permitting speakers to criticize a legislative body and its members,
 - It is a best practice is to allow such speech to occur unless the facts show that the speech is actually disrupting a city council meeting.
- Talk to your city attorney

Limits on Public Comment

- What about *irrelevant* speech?
 - General Public Comment vs Public Hearing/Special Meeting
- Practically speaking
 - Very fast paced
 - Very hard to characterize speech and enforce accordingly on the spot
 - Very fact Specific
 - Impossible to devise a firm rule as to when warning/removal is appropriate.
 - Risky
- Talk to your City Attorney
- Provide general reminders before public comment starts
 - Fight speech with more speech, not stopping speech

Disruptions at Public Meetings

- Courts have explained that “actual disruptions means an actual disruption.
- Disrupts or impedes or renders infeasible the orderly conduct of the meeting
- It does not mean constructive disruption, technical disruption, virtual disruption, nunc pro tunc disruption, or imaginary disruption



What is actual disruption?



Behavior Considered Disruptive	Behavior Not Considered Disruptive
Exceeding the allotted time to speak	A silent Nazi salute to the city council, i.e., a silent act of protest that went largely unnoticed by the meeting participants, until singled out by an offended councilmember
“Excessive” profanity and slander (must rise to the level of disrupting the Council’s ability to conduct its business)	Personal attacks against individual Council members, even if it appears off-topic, as this can be considered protected political speech
Speaking without first being recognized by the Mayor/presiding officer (for instance, yelling things out from the audience)	Profanity alone, without the additional element of a “disruption” to the meeting
Specific, credible threats to the Council, members of the public, or themselves	Criticism of City Council policies, or City employees or officials, whether valid or entirely unfounded
Inciting violence or using “fighting words”	
Encouraging members of the audience to disrupt the meeting (i.e., by applauding), when the meeting is actually disrupted	
Yelling and speaking out of order to an extent that it hinders another member of the public from addressing the legislative body	

Regulating Disruptions at Public Meetings



- In applying rules prohibiting disruptions at meetings, the requirements of viewpoint neutrality is critically important
- Courts have invalidated orders that individuals be removed from meetings where the courts concluded that the actions were based on viewpoints of the speakers, or speech offended the sensibilities of the public officials
- First Amendment principles limit the circumstances in which a body may order a member of the public removed from a meeting for behavior the body deems disruptive

Taking Control of Disruptive Meetings



- Orderly conduct of public meetings protects the right to free speech
 - Clapping example
- Freedom of everyone to talk at once can destroy the right of anyone to effectively talk at all
- If any public participation is permitted, the rules regulating who may speak cannot be used to silence a participant merely because their views happen to be unpopular with the audience or with the government sponsors of the meeting

Taking Control of Disruptive Meetings



- Must apply all rules of decorum equally.
- To withstand scrutiny under the First Amendment, the City must **apply** its rules of decorum equally to all content addressed to the Council.
- For instance, if the Council applied a rule to one content (or subject matter), and not the other, then an adversely impacted community member could reasonably contend that even though a rule on its face was viewpoint neutral, the Council is violating the First Amendment **as applied** because the Council is choosing to favor one view over the other by stifling speech on that subject (no viewpoint discrimination).

Mitigating Disruptive Meetings



- SB 1100
 - A bill designed to address disruptions at public local government meetings
 - SB 1100 prescribes the following process for removal:
 - Warn the individual that their behavior is disrupting the meeting and their failure to cease their behavior may result in removal
 - Remove the individual if they do not “promptly” cease their disruptive behavior
 - Under existing law, and as interpreted by the courts, a city council may adopt reasonable and lawful regulations and rules of decorum rules governing the conduct of their public meetings and allow for the removal of a person who disrupts the meeting
 - If there is no disruption, there cannot be a removal

Mitigating Disruptive Meetings



- Same Disruption Test
 - Disrupts or impedes or makes infeasible the orderly conduct of the meeting
 - Person must be warned that that their behavior is disruptive and that continued disruption may result in the person's removal (unless the person is engaging in use of force or threatening to use force against anyone)
- How many warnings?
- Best Practices:
 - Make a record before ejecting someone from a meeting for disruptive behavior
 - Provide clear and ample warnings
 - Give them an alternative
 - Ask them for voluntary compliance
 - Provide specific direction to the person that will escort out.

Consequences for Disrupting a Meeting

- **Take a recess and speak to the individual
- Penal Code section 403
 - Makes it a misdemeanor to willfully disturb or break up a lawful assembly or meeting unless the person has legal authority to do so
 - Actually impair the ability of the body to effectively conduct its meeting
- Removal from meeting
 - For the agenda item or for the whole meeting?
- Clearing the room



Best Practices- City Manager Perspective



- Gathering feedback and input from the community is fundamental to what we do—how do we best facilitate that?
- Sometimes it's as a result of things that we as managers deal with:
 - Public safety
 - Infrastructure
 - Covid
 - Homelessness, affordable housing
 - Community relationships—what relationships have you invested in?

Best Practices- City Manager Perspective



- Sometimes it has nothing to do with what we control
 - Terrorism, crises, natural disasters
 - National stories involving police use of force, or other news leading items

Best Practices- City Manager Perspective



- Adoption of council rules that clarify the types of behavior deemed disruptive
- If a highly charged issues is on the agenda, encourage the presiding officer to explain these rules and how they will be applied
- Meet with key staff, and if appropriate a police department representative, before the meeting to ensure that everyone is on the same page about how disruptions will be handled
- Encourage the presiding officer to provide at least one warning before ordering a disruptive individual from the meeting room

Best Practices- City Manager Perspective



- Encourage the agenda to be organized in a manner most likely to ensure that the critical business of the council can be completed even if disruptions are anticipated with respect to a particular agenda item



Best Practices- City Manager Perspective



- A couple examples:
 - 12/2/2015: Terrorist Attack in San Bernardino
 - Direct partnerships with religious leaders
 - Sensitive collaboration on the front side
 - Police Use of Force Incidents
 - What will people take issue with?
 - Bodycam
 - Talk to your legal team and other partners

Best Practices- City Manager Perspective



- Concluding thoughts:
 - From staff perspective, modelling example behavior and encouraging professional behavior
 - Non Brown Act meetings: community forums, and being prepared for what might arise
 - Fostering positive dialogue and meaningful discussions
 - Staying connected: Council leadership, City Attorney, and City Manager

Best Practices- City Attorney Perspective



- Treat everyone equally
- Know your rules of decorum- create a cheat sheet
- A recess is better than removal
- Meet with Chair, City Clerk, City Attorney in advance to discuss protocol- always better when on the same page
- Sometimes just ignoring it is the best practice
- Can remind public that vulgar speakers do not reflect the values of the city- more speech
- Make a record of disturbances
- Provide clear and ample warnings
- Is there an alternative?
- Rethink when public comment is made and room set up
- Make sure safety and conducting city business, not speech, is the top priority

Dealing with Specific Types of Disruptions by Members of the Public



- A speaker refuses to leave the microphone after his or her speaking time has expired
- Speaker insist on addressing matters clearly not relevant to the agenda item
- Verbal disruptions from the audience
- A large crowd shows up to the meeting with large signs to protest a certain policy/action
- A member of the City Council engages a public speaker aggressively
- What about a non-Brown Act (town hall) meeting? Are the rules different?

Public Comment



- [City Council Meeting](#)



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Questions?



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