ACLU Washington

Know Your Rights

Public Comments and Other Speech at Local Government Meetings

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1. **Do local government bodies have to provide public comment periods to allow members of the public to speak at official meetings?**

   In Washington, the Open Public Meetings Act (OPMA) requires local governing bodies like city councils, county councils, and county boards of commissioners to keep both regularly scheduled and "special" meetings open to the public. RCW 42.30.030. If a declared emergency prevents a governing body from meeting in person, that body is required to provide a free remote option for the public to listen to the meeting in real time. Agencies are encouraged to provide a free remote option for the public to observe and participate in all public meetings.

   As of 2022, governing bodies subject to OPMA must provide periods for public comment at every meeting in which the body takes a "final action." RCW 42.30.240. A final action is a collective decision or a vote by a majority of the body on a motion, proposal, resolution, order, or ordinance. RCW 42.30.020(3). The only exception to this requirement is when an emergency situation makes public comment unfeasible. Public comment may be spoken during the meeting or submitted in writing prior to the meeting. The agency gets to decide which form public comment will take; if testimony is taken in written form, the body must set a "reasonable deadline" for how long prior to the meeting the testimony must be submitted. RCW 42.30.240. If public comment is accepted orally, the governing body must, when feasible, provide a remote option for any person who has difficulty attending the meeting physically (for example, because they have a disability).

2. **Can the governing body limit the discussion to certain subjects during public comment?**

   Certain local government meetings, such as city council meetings, are considered "limited public forums." This means that a city council can enact viewpoint-neutral restrictions on speech ("place, time, and manner"), if there is a legitimate and compelling government interest.[1] Local government bodies can limit speech to certain

[1] *Steinburg v. Chesterfield County Planning Commission,* 527 F.3d 377 (4th Cir. 2008).

topics (e.g., agenda items) and timeframes, as long as such restrictions are not unreasonable and the restriction is not based on disagreement with a speaker's viewpoint.[2]

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 is somewhat unclear, but the courts have given us some hints. Courts have held that government bodies can legally eject or remove a person from a public meeting for interrupting the chairperson of the meeting.[3] In contrast, courts have held that governmental bodies cannot legally exclude people for disruption simply because the person uses obscenities in connection with political speech (such as the term "god damn")[4] or uses a silent offensive gesture (such as a Nazi salute).[5]

In Washington, governing bodies may set limitations on disruptive behavior during their meetings. If a group becomes so disruptive that excluding the disruptive individuals will not restore order, then the governing body may clear everyone from the meeting room, whether they are being disruptive or not, and proceed without the public in attendance. RCW 42.30.050. Only non-disruptive members of the press must be permitted to remain in the meeting room.

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

It is unconstitutional for a governing body to restrict a member of the public from speaking because it disagrees with their specific viewpoint.[6] Similarly, it can be unconstitutional to limit a person's participation in public comment because of their

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[2] In *Steinburg*, the Fourth Circuit found that a planning commission had not violated an individual's constitutional rights by ejecting him from a public meeting for bringing up matters not within the scope of the agenda item at hand and for his disruption. The Court said that "imposing restrictions to preserve civility and decorum [are] necessary to further the forum's purpose of conducting public business." *Id.* at 385.

[3] In *Eichenlaub v. Township of Indiana*, 385 F.3d 274 (3d Cir. 2004), the plaintiff was deemed disruptive for being "repetitive and truculent" and for interrupting the chairman of the meeting. The Third Circuit Court of Appeals found his ejection from a "citizens forum" as a result of his behavior constitutionally permissible. *Id.* at 281.

[4] Courts have found that use of obscenities is not sufficient disruption to permit ejection from a meeting. For example, in *Leonard v. Robinson*, 477 F.3d 347 (6th Cir. 2007), the Sixth Circuit found that it is unlawful to remove a speaker for using the words "god damn" at a township board meeting, because it held that using an expletive along with political speech is a fundamental protection under the First Amendment. *Id.* at 360.

[5] The Ninth Circuit found that a person who gave a silent Nazi salute during a city council meeting had not engaged in disruptive behavior. In *Norse v. City of Santa Cruz,* 629 F.3d 966 (9th Cir. 2010), a Ninth Circuit panel required additional disruptive behavior beyond the fact of performing a Nazi salute. *Id.* at 970.

[6] *Kindt v. Santa Monica Rent Control Board*, 67 F.3d 266 (9th Cir. 1995).

membership in a certain group.[7]

Ultimately, courts will consider whether the local government's decision to hear comments of one speaker while excluding those of another are related to their specific viewpoints. If the basis for excluding a person is their viewpoint, then such restriction is not neutral and is likely unconstitutional. On the other hand, restrictions on the timing, location, or manner of speech are much more likely to be constitutional.[8]

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

A government body may impose a time limit on a speaker during a public comment period so long as it does not discriminate based on the content of the speaker's expression.[9] If the time limit is content-neutral, is viewpoint-neutral, and serves a "compelling government interest" (such as conserving time and allowing others to speak), then it is likely permissible.[10] For example, a city council may provide a total public comment period of 30 minutes and restrict speakers to 3-5 minutes each, 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 the same decision 3 minutes.

6. **Can local government bodies restrict signs at their meetings or place size limits on them?**

It is not clear under federal and state law whether the government can impose size limits on political signs. However, any restriction would need to be viewpoint-neutral and uniformly applied, be tied to a compelling government interest, and still allow people to express themselves in other ways.[11] For example, a city council may not impose political sign restrictions only on attendees who favor a certain political party.

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[7] In *City of Madison, Joint School District No. 8 v. Wisconsin Employment Relations Commission,* 429 U.S. 167 (1976), the Supreme Court held that it was a First Amendment violation to exclude a nonunion schoolteacher who spoke at a board of education meeting regarding a collective bargaining agreement. The exclusion of the teacher's speech was initiated by unionized schoolteachers who believed that nonunionized schoolteachers should not affect collective bargaining agreements they are not a part of. The Court disregarded that position as violating constitutional rights: "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." *Id*. at 175-176.

[8] *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37 (1983).

[9] *Shero v. City of Grove, Oklahoma*, 510 F.3d 1196, 1203 (10th Cir. 2007).

[10] *Wright v. Anthony,* 733 F.2d 575, 577 (8th Cir. 1984).

[11] *Perry Education Association v. Perry Local Educators' Association,* 460 U.S. 37, 45 (1983).

But if signs are limited to a certain size to avoid blocking meeting attendees' views, that may be a neutral and permissible rule.[12]

Note: Public local government bodies 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 to run meetings effectively.[13]

2022 Update

[12] *Tyler v. City of Kingston*, --- F.Supp.3d ---, 2022 WL 790772 (N.D.N.Y. 2022) (on appeal) ("Excluding signs and posters from a meeting of the City Council is reasonably related to keeping the tenor of the meetings from devolving into a picketing session inside City Hall"). *See also, We the People, Inc., of the United States v. Nuclear Regulatory Commission*, 746 F.Supp. 213 (D.D.C. 1990) (holding that a prohibition on signs was reasonable due to the advanced explanation that posters can be "visually disruptive" to the meeting).

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