3/7/2024 Executive Committee Meeting Written Public Comment Submissions

Submissions

Dianne Ramsey

Good afternoon Executive Committee Members:

Attached is notice I received midday today, for a meeting to be held this evening.

I believe it would benefit Sound Transit to hear from as many citizens as possible, not just the usual suspects.

Is there a ST policy on how much advance notice should be given members of the general public prior to these informational events? If not, perhaps there should be.

Thank you for your consideration.

Dianne Ramsey
Seattle - D3 resident

Marilyn Kennell

We are a coalition of West Seattleiites who have studied traffic problems (and solutions) locally, nationally and internationally. Some of us have devoted our lives to environmental issues. Our members care deeply about assuring our planet will be livable for the next generation. We, all, are for mass transit, we ride the bus, some of us our car-free; to a person we believe Sound Transit light rail to West Seattle needs to be rethought. There is a federally mandated law that requires a NO BUILD OPTION to be included in the Environmental Impact Statement. Sound Transit has not given that option serious, if any, consideration. We are asking for them to do so. We, also, are on the record repeatedly asking for a town hall.

- The heron rookery on Pigeon Point is also legally protected - but Sound Transit plans to shave off the north end of Pigeon Point - heron and human habitats. There is no oversight, no accountability, no transparency. ST 3 WSBLE DEIS uses the words “irreparable” and “permanent” to describe the “damage” that will be done to our various and many eco-systems. “Mitigation” policy is not addressed.

- The “heat zones” that will be created by cutting down 2-3 acres of West Seattle forests will hurt all of Seattle; poorer neighborhoods like Delridge will suffer the most.

- For $4 BILLION we are getting 4 miles of light rail track that will cut through our businesses, homes, services and ruin the community ST purports to serve. The light rail double-track will be the height of the West Seattle Bridge - and will be built on a known earthquake fault line. Sound Transit’s answer is to drive the pilings 100 feet deep. Who is overseeing that? How do we know that deeper means more stable?

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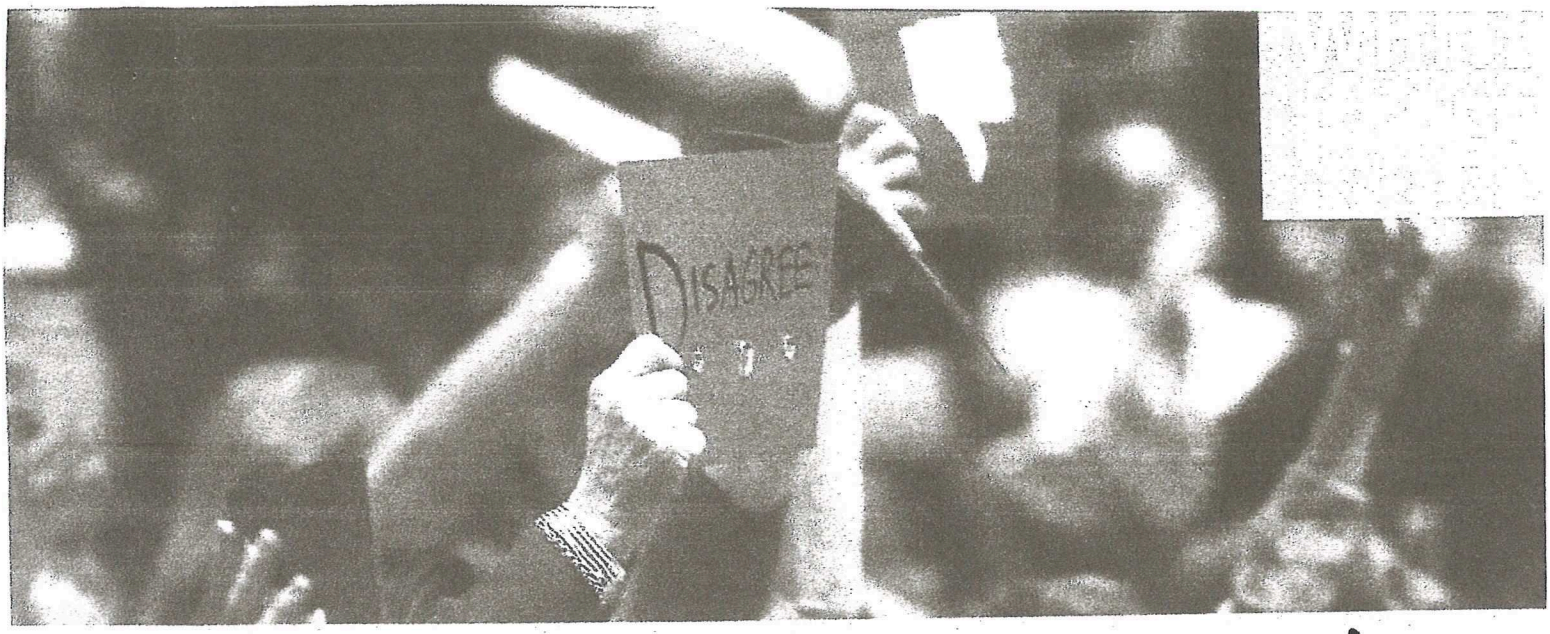
MARILYN KENNELL

Alex Tsimerman

The substance of this comment is within a document included at the end of this summary.



League of Oregon Cities

STOP DEM NAZI

Legal Guide to Handling Disruptive People in Public Meetings

Fascist x gunta!

Alex Zimerman

[redacted]

Standup-America.

MAY 2017

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Introduction

Almost every local government official will be in a public meeting at some point in his or her career and experience the near or total derailment of the meeting by a disruptive member of the public. Whether it is the person who refuses to relinquish their position at the podium during public comment or the audience member who repeatedly shouts their dismay about a comment being made by a recognized speaker, such disruptions can be annoying, and in some cases so severe that officials are unable to conduct the public's business.

These types of situations can be challenging, as the governing body attempts to find a way to deal with the disruption without escalating the situation, or worse, inviting a lawsuit.

Sometimes, the governing body simply ignores the disruption. In other situations, it may be necessary to end the meeting and resume at a later date, hoping a period of cooling off will prevent a disruption when the meeting is resumed. If those efforts do not work, public officials are often left wondering if they can legally remove the person, and if so, whether they can prohibit the person from returning to future meetings. Public officials also refer to the removal of a person from a public meeting or their suspension from future meetings as "trespassing a person." The purpose of this guide is to explore those latter options for dealing with disruptive behavior.

This guide begins with an overview of public meetings law and whether and when the public has a right to speak at public meetings. The guide then turns to the constitutional issues on what types of speech are protected, and the issues that are involved in removing someone from a council meeting. Finally, the guide summarizes the relevant case law in this area and concludes with some practical advice for addressing members of the public who are disruptive to a city council meeting.

Public Attendance Versus Public Participation

Although Oregon's public meetings law requires governmental meetings to be open to the public, it is not a law that requires the government to allow the public to participate in its meetings. In relevant part, ORS 192.630(1) states that "all meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting." Oregon's attorney general has explicitly said that the "right of public attendance guaranteed by the Public Meetings Law does not include the right to participate by public testimony or comment."[1]

Although Oregon's public meetings law does not require governments to allow public participation, it is often required by other state laws or local ordinances. For example, state law requires a city to hold a public hearing before adopting its budget. State law also requires city councils to hold public hearings when making certain land use decisions. In addition, many cities have adopted rules of procedure for their city council meetings that allow the public to speak on certain matters of public concern at a council meeting.

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[1] Attorney General's *Public Records and Meeting Manual*, Public Meetings Page 155 (2019).

Controlling Public Participation

When state or local rules allow the public to speak, any restrictions that a city desires to impose must fall within constitutional parameters.

A. Constitutional Amendment Protections Provided to Public Meetings

In the United States, the First Amendment ensures that "debate on public issues should be uninhibited, robust, and wide-open."[2] "Citizens have an enormous first amendment interest in directing speech about public issues to those who govern their city."[3] However, cities are not required to "grant access to all who wish to exercise their right to free speech on every type of government property, at any time, without regard to the disruption caused by the speaker's activities. Even in a democracy, the government need not tolerate actual disruptions of government business."[4]

In recognition of the fact that public meetings are a highly important place for the public to share concerns with their governing leaders, and equally recognizing the importance of a governing body's need to actually govern, a city council meeting (or other public meeting) is considered to be a limited public forum. In general, a limited public forum is a forum created by the government for expressive activity, wherein the activity can be moderately limited through time, place, and manner restrictions, with the caveat that the restrictions are viewpoint neutral.

Article I, Section 8 of the Oregon Constitution also protects the free speech rights of the public. Although the Oregon courts have not decided a case involving free speech and public meetings, they have made clear that any content-based restriction is unconstitutional under the Oregon Constitution. Consequently, where the law allows the public to speak, the council must take extreme caution to not take action that limits what the person is allowed to say.

B. Time, Place and Manner Restrictions

Under the federal constitution, it is clear that city councils may impose content-neutral time, place, and manner restrictions. Time, place, and manner restrictions are simply that: a rule regulating the specific time in which a person may speak, the location from which a person can speak, and the manner in which the speech can be made. For example, a city council may choose to limit public comment to certain points in a proceeding and (subject to any state law) limit the amount of time a person may speak. For example, a rule that "the public may provide testimony only during that time noted as 'Public Comment' on the agenda, with said testimony being provided from the designated podium, and shall be limited to no more than three minutes per speaker" has been upheld by the Oregon Court of Appeals and the Ninth Circuit Court of Appeals.[5]

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[2] *Walsh v Enge*, 154 F Supp 3d 1113, 1119 (D Or, 2015) (*quoting, N.Y. Times Co. v Sullivan*, 376 US 254, 270, 84 S Ct 710, 11 L Ed2d 686 (1964)).
[3] *White v City of Norwalk*, 900 F2d 1421, 1425 (9th Cir 1990).
[4] *Walsh v Enge, 154 F Supp 3d* at 1119.
[5] *Kindt v. Santa Monica Rent Control Bd.*, 67 F3d 266 (1995).

The more difficult part for governing bodies in controlling people's speech during public meetings is ensuring that the control measures imposed are both viewpoint neutral and enforced consistently and equally to all speakers. A measure which "serves purposes unrelated to the content of expression and only incidentally burdens some speakers, messages, or viewpoints" is considered viewpoint neutral.[6] For example, the court has noted that requiring a member of the public to limit their testimony to the topic presently being discussed by the overall governing body is an acceptable viewpoint neutral regulation.

C. Removing Disruptive People from Public Meetings

Disruptive people can be removed from public meetings (public officials often refer to this removal as "trespassing"). However, the person must actually be disrupting the meeting. The Ninth Circuit has specifically stated, "Actual disruption means actual disruption. It does not mean constructive disruption, technical disruption, virtual disruption, *nunc pro tunc* disruption, or imaginary disruption."[7] A *nunc pro tunc* disruption is one where the speech could cause a disruption after the fact.

To that end, individuals who refuse to sit down when their allotted speaking time has ended can be removed from the public meeting. Persons who interrupt a meeting's proceeding by repeatedly shouting out and yelling can also be removed. Even individuals located in a different room than an actual public meeting who are protesting so loudly that it interferes with the meeting can be removed from the area. On the other hand, a person who rolls his or her eyes, repeatedly sighs, shakes their head or guffaws is probably not actually disrupting the meeting. A person who is merely a distraction is not necessarily and actual disruption, and thus, should be ignored.

Because the requirement is that an actual disruption of the proceedings occur, it is not appropriate to remove a person because of some type of symbolic expression that does not interrupt or halt the meeting itself. For example, the Ninth Circuit found that while a person giving a Nazi salute may be offensive, giving the salute did not interfere with or interrupt the public meeting itself. And because the actual meeting was not interfered with by the salute, the removal of the person giving the salute from the meeting amounted to "viewpoint discrimination" by the governing body. Having a person removed from a public meeting because their view on a matter is offensive to some or all of the other people in attendance at the meeting is not legally permissible.

The Nazi salute case is one to be particularly cognizant of because it is applicable to audience members. The federal courts recognize that audience members in limited public forums (like city council meetings) are "subject to the same constitutional rules that apply to those addressing the chamber."[8] In practice, this means that audience members who wear clothing that may generally be described as offensive, who make what is commonly thought of as crude or

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[6] *Alpha Delta Chi-Delta Chapter v Reed*, 648 F3d 790, 800 (9th Cir 2011) (*quoting, in part, Ward v Rock Against Racism*, 491 US 781, 791, 109 S Ct 2746 (1989)).
[7] *Norse v City of Santa Cruz*, 629 F3d 966, 976 (9th Cir 2010).
[8] *Reza v Pearce*, 806 F3d 497, 505 (9th Cir 2015).

inappropriate hand gestures, and in some instances (absent a rule or ordinance prohibiting otherwise) passively hold signs or symbols that some find distasteful, may only be removed from the public meeting if those actions truly impede the public body's ability to conduct the meeting.

D. Suspending Disruptive Persons from Future Public Meetings

It is not uncommon for a person desiring to make their point to cause several disruptions at the same meeting or over a series of meetings. The constant disruption of public meetings by the same person, despite repeated warnings and removals, often leads public officials to consider suspending the person from future public meetings (otherwise known as issuing a trespass order). While the temptation to bar a disruptive person from future meetings is great, the legal ability to do so is questionable.

Two relatively recent federal court opinions held that prohibiting a disruptive person from attending future meetings, and from entering the entirety of a government facility, is not permitted under the First Amendment to the U.S. Constitution. The federal district court for Oregon specifically held in *Walsh v. Enge*[9] that a government may not "prospectively exclude individuals from future public meetings merely because they have been disruptive in the past." In a separate decision, *Reza v. Pearce*,[10] the Ninth Circuit Court of Appeals ruled that "imposing a complete ban" on a person's entry into a government building "clearly exceeds the bounds of reasonableness" established under First Amendment jurisprudence. Both decisions are explained below more fully.

1. Walsh v. Enge, Hales, and City of Portland

In the *Walsh* case, the city of Portland's municipal code permitted the city to indefinitely suspend a person from city hall and the city council's chambers if the person disrupted a city council meeting. During a city council meeting, Mr. Walsh raised his voice and interrupted the meeting to the point that he was asked to leave by the mayor. After the meeting concluded, Mr. Walsh received a notice of exclusion from the city which prohibited him from attending any city council meeting or appearing in city hall for a period of 60 days.

The Oregon District Court found that the Portland ordinance violated the First Amendment to the U.S. Constitution. In its decision, the court noted that if Portland's ordinance was permitted to stand, it could "lead to officials shutting the government's doors to those whose viewpoints the government finds annoying, distasteful, or unpopular. Permanent or even lengthy exclusions for past disruptive behavior conduct could become a convenient guise for censoring criticism directed toward the powerful. The First Amendment's guarantees, although not absolute, are not so flimsy."[11]

In issuing its ruling, the Oregon District Court noted that the suspension from future meetings was not reasonable under First Amendment jurisprudence. In order for the ordinance to have been found reasonable, the ordinance would need to fulfill a legitimate need. Portland argued

[9] *Walsh v Enge*, 154 FSupp3d 1113 (D Or 2015).
[10] *Reza v Pearce*, 806 F3d 497 (9th Cir 2015).
[11] *Walsh* v Enge, 154 FSupp3d at 1119.

that the ordinance was needed for two reasons. First, the ordinance was necessary to protect the public's safety. Second, even though Mr. Walsh was prohibited from attending city council meetings, he had ample alternatives to communicate his concerns with Portland's governing leaders. Neither of Portland's argument were held to be valid by the court.

The court noted that while public safety is a legitimate concern and could potentially allow for a person to be prospectively banned from attending a city council meeting, there was nothing in the record that showed that Mr. Walsh himself was a threat to any person. "Mere speculation that some persons may make others feel unsafe or engage in additional disruptions is an insufficient basis upon which to erect a governmental power to bar those who wish to express their views from participating in public debate."[12] The court was particularly insistent that if Mr. Walsh was disruptive in the future, he could simply be escorted out of the meeting.

In addition, the court found that Portland's ordinance did not provide Mr. Walsh with any reasonable alternatives to voice his concerns about public matters. The court appears to recognize that there is a fundamental difference between making a verbal statement at a city council meeting on a matter of public concern and sending in a letter. In the holding, the court stated, "prospective exclusions defeat the very purpose of the forum: to provide the opportunity for discourse on public matters."[13]

2. *Reza v. Pearce*

In this case, Arizona State Senator Pearce issued an order barring Mr. Reza from the state Capitol because he had previously been disruptive during a hearing chaired by Senator Pearce on an omnibus immigration bill. In addition to barring Mr. Reza from the Capitol, Senator Pearce adopted a new rule which required individuals who disrupted the Senate's proceedings from being excluded from the Capitol for two weeks for a first offense and for 60 days for any subsequent offenses. When Mr. Reza attempted to enter the Capitol to attend a previously-scheduled meeting with another senator to discuss obtaining permits for a protest, he was refused entry to the building.

The Ninth Circuit specifically held that banishment from the state Capitol was unreasonable under the First Amendment. In the opinion, the court specifically notes that the ban at issue excluded Mr. Reza "from all future hearings on any subject, based on the purported fear that he could be disruptive in the future".[14] The court additionally noted that the ban prevented Mr. Reza from "visiting his elected representatives to urge legislative action on any subject.[15]" And while the court noted that public safety can be a reasonable ground to deny entry to a public building, there was no real threat to public safety established in the case, and the ban was therefore not reasonable.

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[12] *Id.* at 1132.
[13] *Id.* at 1133.
[14] *Reza v Pearce,* 806 F3d 497 at 507.
[15] *Id.*

3. *Public Safety Exception*

In both of the appellate cases described above, the courts reference that public safety concerns may be a legitimate reason to prospectively prohibit a person from entering and participating in a public meeting. But in both cases, the court found no real threat to public safety. These cases leave open the possibility that if a city council establishes that a real threat to public safety exists, it may be able to prospectively prohibit a person from attending a future public meeting. However, as there is no decision on point, it is reasonable to assume that any such suspension should be significantly limited in duration.

After conferring with legal counsel, if a city a determines that a person should be prospectively prohibited from entering and participating in a public meeting, the attached Appendix A, entitled "Notice of Exclusion," may be used as starting point in drafting an appropriate exclusion order. Any such notice of exclusion must be carefully crafted to ensure that the following occurs: (1) definitive evidence of a threat to public safety is established; (2) the subject of the order is provided appropriate due process; and (3) the subject of the order is given an opportunity to appeal the notice.

E. Arresting Individuals Who Disrupt Public Meetings

Having a disruptive person removed from a public meeting often results in the person simultaneously being arrested for disorderly conduct. Oregon has two criminal statutes related to disorderly conduct, one pertaining to disorderly conduct in the first degree, the other pertaining to conduct in the second degree. Both statutes generally prohibit a person, in relevant context to this discussion, "with intent to cause public inconvenience, annoyance or alarm," or creating a risk thereof, from: engaging in violent or threatening behavior; making unreasonable noise; or disturbing lawful assemblies. The fundamental purpose behind both disorderly conduct statutes is "to protect the general public from conduct that threatens to erode the community's sense of safety and security."[16]

Individuals have challenged the validity of the disorderly conduct statutes on the basis that they violate a person's right of free speech and expression under Article 1, Section 8 of the Oregon Constitution. The Oregon Court of Appeals has determined that this type of constitutional challenge to the disorderly conduct statutes requires a court to determine if an arrest for disorderly conduct "had as its objective the prevention of some harm within its power to prevent or whether its objective was to prevent protected speech."[17]

In *State v Rich*, a defense attorney was arrested outside of a courtroom for disorderly conduct when he yelled at a police officer for more than a minute. The yelling was so loud that it could be heard outside in a hallway and in offices that opened to the hallway. At least some employees of the courthouse indicated the yelling was so loud it stopped them from working. The defense attorney argued that his arrest for disorderly conduct violated Article 1, Section 8 of the Oregon

[16] ORS 166.023 and ORS 166.025.
[17] *State v Rich*, 218 Or App 642, 647 (2008).

Constitution in that he was arrested because the officer did not like the words he was yelling (the defense attorney was using profane language).

After reviewing the matter, the Court of Appeals determined that the defendant was not arrested because of the words he was uttering, but rather, as a result of the volume at which he was uttering those words. Finding that the basis of the disorderly conduct arrest was "the speech's noncommunicative elements," the court found that the arrest was proper and Constitutional. It was the volume of the speech and the effect it had on the public (causing work to cease) that caused the disorderly conduct, not the words themselves.

When a person is arrested at a public meeting for disorderly conduct, it should be clear that the person is not only disrupting the meeting from occurring, but that the person's behavior (and not the words being used) is what is eroding the public's sense of safety and security.

Conclusion

Public officials do not have to allow people to disrupt or derail their ability to conduct the people's business. It is perfectly acceptable for a governing body to establish rules that dictate when public comment can be made, how long the public comment can be given, and the topic that the public comment must surround. Governing bodies are also permitted the right to remove any person from a public meeting when that person actually disrupts the meeting. If a person's disruption of a meeting is so deleterious that it threatens the safety and security of the public, the governing body can request that the person in question be arrested for disorderly conduct. And while public officials may wish to prospectively ban consistently disruptive people from future meetings, officials are warned that the only time such an action may even be legally permissible is if the officials can prove that the disruptive people proves to be an actual threat to the public safety—and even then, a limited suspension is perhaps most prudent. As a general rule, cities should utilize the least restrictive option to a disruptive citizen's rights when trying to regain and retain order of a public meeting.

APPENDIX A

NOTICE OF EXCLUSION

Dear [SIR/MADAM]:

You are hereby excluded from the following property: [LOCATION/ADDRESS] ("property").

This letter is to inform you of the conditions and processes associated with your Notice of Exclusion. This exclusion is effective as of [DATE TRESPASSED]. You are prohibited from entering the property for a period of [LENGTH OF EXCLUSION/HOURS/EVENT].

In order to facilitate necessary actions or protected activities, you may be permitted upon prior approval to enter the property by giving at least one-day advance notice to [EXCLUDING AUTHORITY]. This Notice of Exclusion is given pursuant to ORS 164.245, as well as [MUNICIPAL/COUNTY CODE §]. Your entry upon the property without express permission may result in adverse consequences including, but not limited to, initiation of civil or criminal proceedings against you.

Should you feel this Notice of Exclusion has been made in error, or you desire to contest this Notice of Exclusion, an appeal may be made to the Municipal Court pursuant to [MUNICIPAL CODE §] by filing a notice of appeal within ____ days of your receipt of this Notice of Exclusion. The exclusion from the property shall remain in effect pending your appeal. On appeal, evidence may be offered and arguments made before an impartial hearings officer. You are not entitled to court appointed counsel at that appeal, however, you may retain counsel at your own expense.

Should you choose to not to appeal, this exclusion will expire by its own terms on [DATE EXCLUSION ENDS].

Sincerely,

[Signed by Person Authorized to Issue]