Citizen Advocacy Center
Right to Speak Public at Government Meetings Survey
2017 Sunshine Week Report

This report assesses changes in municipal government public comment practices since the 2011 amendment with respect to: (1) how many municipalities allow for public comment at open government meetings, (2) how municipalities have established and recorded rules for public comment, (3) the range of the type of rules adopted to govern public comment periods; and (4) assessment of content-neutral, content-based rules and First Amendment principles.

Summary of Findings

- An Increase in Municipalities Allowing the Right to Speak at Government Meetings
  - In 2016, 150 municipalities allowed public comment at regular board meetings, an increase by almost 50% from 2010 where there were only 101 municipalities.
- An Increase in Municipalities Requiring Speaker Identification Prior to Public Comment
  - More municipalities require sign-in
    - In 2016, of 150 municipalities, 48 required or requested members of the public to sign-in prior to giving a public comment at the meeting; nearly a 100% increase from 2010 where there were 26 municipalities.
  - More municipalities require speakers to state their name and/or address
    - In 2016, 44 municipalities required or asked the speakers to state their name at the beginning of the public comment; 35 of the 44 also required or asked the speaker to state their address.
- An Increase in Municipalities Imposing Time Limits on Public Comment
  - In 2016, 88 municipalities imposed a time limit on the length of each public comment and/or on the entire public comment period, compared to 36 in 2010, which is an increase of 144%.
- An Increase in Limits on the Conduct or Content of Public Comment
  - In 2016, 48 municipalities had policies that included content-based regulations on public comment, a 100% increase from 2010 when 24 municipalities had content-based rules in their public comment policy.
  - 2016 findings regarding mandating "civility" and prohibiting "negativity":[1]
    - 15 imposed *civility* of some sort.
    - 41 regulated *negative* content in some way.

Recommended Public Comment Best Practices

- Codify public comment rules in local ordinances.

[1] Note that a municipality may have both rules regulating civility as well as regulating negativity.

- Clearly post public comment rules on any government webpage discussing government meetings, and on agendas.
- Maintain consistency in the language used to describe the rules of public comment anywhere that notice of public comment is given, including the website and hard-copy agendas.
- Allow for public comment prior to each agenda item, with an initial public comment period at the beginning of the meeting reserved for non-agenda items, and allow for a public comment period at the end of the meeting.
- Place reasonable time limits on individual speakers, such as three or five minutes, and 30 minutes per total public comment period.
- Do not *require* sign-in for public comment at government meetings, but *offer* sign-in so that the public body may gauge the number of speakers.
- Do not implement content-based rules. Where content-based rules are adopted, include a statement regarding the public's right to criticize government.

II. Study Methodology

This study focused on municipalities within the same five Illinois counties (DuPage, Kane, Lake, McHenry, and Will) as in the 2010 study and investigated the following questions:

- Does the municipality allow public comment?
- If so, where is the right to give public comment documented?
- Does the municipality record rules of procedure that govern public comment?
- If so, where does the municipality document those rules of procedure?
- What types of rules of procedure does the municipality establish and record?

A. Form of Research

CAC gathered research through an online review of municipal codes, municipal websites, and municipal board or council meeting agendas. CAC focused on an online review because municipalities routinely post government information in different locations on the website; government entities routinely rely on websites to distribute information; and if members of the public have access to the internet, the government website is the first stop for people who are seeking information about their right to give public comment.

CAC recognizes that not all municipalities have websites; that while the Illinois OMA requires public bodies to post notice of their open meetings online if they have full-time staff

maintaining the website, there is no consequence for not doing so;[2] and that the OMA does not require the right to speak or the rules governing public comment to be posted on a public body website.[3]

B. Documenting the Right to Speak

A municipality was considered to have documented the right to give public comment if any of the following were true:

- The municipality's code, policy, and/or agendas explicitly state that the public has a right to give public comment.
- The municipality's code provides a spot for "Public Comment" (or any of the myriad synonyms, e.g. "Audience Participation," "Public Participation," "Citizens' Comments," "Public Forum," etc.) in an Order of Business section with or without elaborating on the right.
- The municipality's agendas provide a spot for "Public Comment" (or any of the myriad synonyms, e.g. "Audience Participation," "Public Participation," "Citizens' Comments," "Public Forum," etc.) with or without elaborating on the right.
- A representative of the municipality at the municipal office reached by phone said that the municipality notices public comment at their open meetings.

C. Assessing the Rules of Public Comment:

With regard to the types of rules of procedure associated with public comment, the study evaluated (1) speaker identification requirements, (2) time limitations (for both individual speakers and for the entirety of the public comment period), (3) the location on the agenda where public comment is allowed during municipal board meetings, and (4) the restrictions that govern the content of speakers' comments.

III. Findings

One hundred sixty nine (169) municipalities were examined. The results presented refer to those municipalities that maintain a website, publish up-to-date meeting agendas/minutes on

[2] The OMA explicitly states that failure to post notice of a meeting online does not void the meeting. "Public notice shall be given by posting a copy of the notice at the principal office of the body holding the meeting, or, if no such office exists, at the building in which the meeting is to be held. In addition, a public body that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body. . . . The failure of a public body to post on its website notice of any meeting or the agenda of any meeting shall not invalidate any meeting of any actions at a meeting." 5 Ill. Comp. Stat. 120/2.02(b).

[3] 5 Ill. Comp. Stat. 120/2.06(g). The "Right to Speak" provision is silent on where a public body must record its rules governing public comment periods.

their websites, and/or provide an online link to the municipal code. As such, 19 municipalities were excluded, leaving 150 qualified municipalities to be considered.

A. Documenting the Right to Speak

The OMA "Right to Speak" provision dictates, "Any person shall be permitted an opportunity to address public officials under the rules established *and recorded by the public body*."[4] As such, the OMA does not tell public bodies *how* they should record their rules established for public comment but rather leaves that decision to individual public bodies. CAC documented that municipalities informed the public about the right to speak in a variety of manners.

- Of the 150 municipalities surveyed, (100%) documented online the right to give public comment.

1. Documenting Right to Speak in Online Municipal Code

Some municipalities took the most formal route to documenting the right to public comment through codification in local ordinances. Municipalities may codify the order of agenda items at regular meetings, including the public comment period. Many municipalities make their municipal code available online, often through a third-party vendor. Adopting a local ordinance formally puts the public on notice of the right to speak; however, it is not a user-friendly avenue for actually informing the public because the average citizen must be skilled enough to find the chapter, title, division, article, and/or section that authorizes public comment.

2. Documenting the Right to Speak on Online Municipal Board Meeting Agendas

Another way municipalities informed the public was through posting "public comment" or "audience participation" on meeting agendas. The OMA requires notice of meetings and agendas to be continuously posted online 48 hours in advance of meetings if it is a public body that has a website that a full-time staff of the public body maintains, although it will not be penalized for failing to do so.[5] While an effective method to inform the public, one barrier to using this method only is that a municipality may forego online notice if the staffing prerequisite is not met; a second barrier is that there is no consequence for a public body for failing to post notice on its website. Additionally, for those municipalities that noted "Public Comment" or "Audience Participation" via posted agendas *only,* they almost always failed to provide written rules of procedure to inform the public about their public comment policy.

[4] *Id.*
[5] 5 Ill. Comp. Stat. 120/2.02(b).

3. Combined Online Posting, Online Codification, and Posting on Agendas

Many municipalities used a variety of methods to inform the public. While using multiple avenues ensures the greatest distribution of information, there were a few barriers identified via this method. First, some municipalities had discrepancies with respect to the information provided, where one location had less information or fewer guidelines than another location.[6] Also, in a select few cases, information posted on multiple locations was in conflict with the others (such as stating different sign-up requirements or different time limits).[7]

B. Assessing Public Comment Rules

When the General Assembly passed the "Right to Speak" provision it also referred to the requirement of the public body to establish rules.[8]

- In 2016, of 150 municipalities:
    - 32 (21.3%) had not established and recorded any rules for public comment at the locations reviewed by CAC.
    - 118 (78.7%) documented some measure of established and recorded rules.
    - Compare with in 2010: out of 101 municipalities that provided for public comment, only 36 municipalities (35.6%) provided rules governing public comment.

- In 2016, of the 118 municipalities (78.7%) that documented some measure of rules:
    - 43 municipalities (36.4%) provide rules in the municipal code only.[9]
    - 31 municipalities (26.3%) provide rules on agendas only.
    - 13 municipalities (11.0%) provide rules in a written policy only.[10]

[6] To name several examples, Carol Stream, Naperville, Willowbrook, Bartlett, Carpentersville, Pingree Grove, Barrington, Deer Park, Troy, Lakewood, McHenry, Spring Grove, and Plainfield all had more detailed rules in their municipal codes and fewer or less specific rules documented in at least one other location.

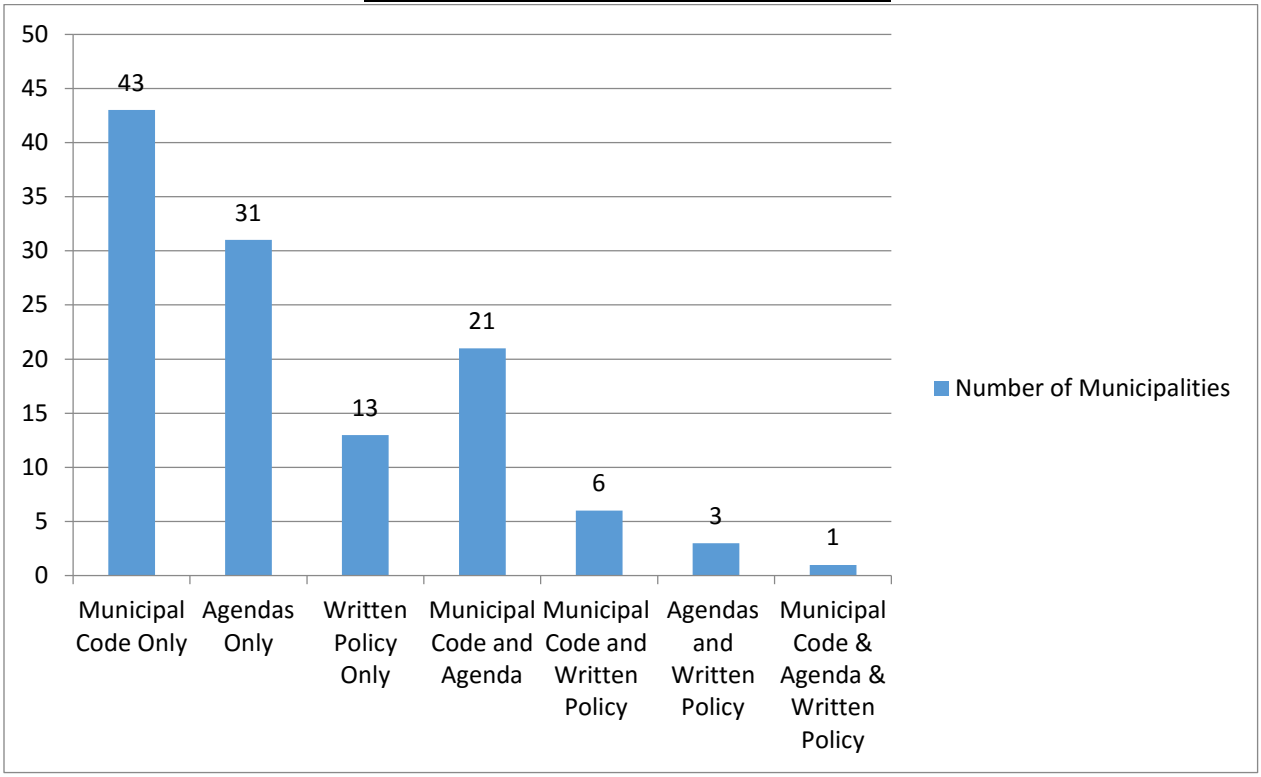
[7] For example, Bolingbrook and Montgomery had rules recorded in at least two different locations, and the rules in one location conflict with rules found in another.

[8] 5 Ill. Comp. Stat. 120/2.06(g).

[9] Tinley Park did not initially have any information available online about the rules of procedure for giving public comment. A phone call to the municipality's offices revealed that they were set to approve the addition of the ordinance to their code. The ordinance, titled "Public Comment Policy" detailed rules for giving public comment at board meetings. Though a phone call was necessary, Tinley Park is included as a municipality that documents the rules for public comment in its municipal code, because the ordinance has since been approved.

- 21 municipalities (17.8%) provide rules in the municipal code and on agendas only.
- 6 municipalities (5.1%) provide rules in the municipal codes and in a written policy only.
- 3 municipalities (2.5%) provide rules on agendas and in a written policy only.
- 1 municipality (0.9%) provides rules in the municipal code, on agendas, and in a written policy (the Village of Montgomery in Kane County).

Location for Notice of the Right to Speak



1. A Closer Look at The Rules: Content Neutral & Content-Based

The OMA does not provide for any specific rules to govern public comment; it merely states that a public body must establish and record rules.[11] Accordingly, any rules established to govern public comment periods must comport with First Amendment protections of political

[10] Wadsworth did not initially have any information available online about the rules of procedure for giving public comment. The Village Administrator was called and a message was left. The Village Manager returned the call and explained that since the message, he had posted Wadsworth's public comment policy online for access by all. Though a phone call was necessary, Wadsworth is included as a municipality that documents the rules for public comment in a written policy because available information has since been changed.

[11] 5 Ill. Comp. Stat. 120/2.06(g)

speech, as interpreted by federal courts.[12] By way of background, the Supreme Court has defined three types of public fora. The degree to which government bodies can restrict speech depends on the type of forum: "traditional public forum" which is property that "by long tradition or by government fiat have been devoted to assembly and debate"[13] and include streets, sidewalks, and parks; "designated public forum" which is when government entities "intentionally open[] a forum that is a nontraditional public forum for public discourse";[14] Or "nonpublic forum" which is property that has never been open to the public, like airports or military basis.[15] In traditional and designated public for a, the government has limited ability to regulate speech.

Public comment periods are "designated public fora" because government entities have intentionally created a forum for the public to speak at their business meetings. [16] There are two categories of rules: content-neutral and content based.

a. Content-Neutral Restrictions

Public comment speakers are protected from undue government restriction by the First Amendment's guarantee of freedom of speech: "Congress shall make no law…abridging the freedom of speech…." But this First Amendment right is not absolute. Government may place *reasonable restrictions* on the *time, place and manne*r of expression, as long as (1) they are justified without reference to the content of the regulated speech, (2) serve a significant governmental purpose, and (3) alternative channels of communication exist for speaker expression.[17] Municipalities can implement time, place and manner restrictions because they have a significant interest in conducting efficient public meetings. Yet, "[a] major criterion for a valid time, place, and manner restriction is that the restriction may not be based upon either the content or subject matter of speech."[18]

Municipalities used the following content-neutral restrictions in crafting rules for public comment:

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[12] The First Amendment of the United States Constitution is incorporated to the states via the Fourteenth Amendment.

[13] *Perry Ed. Assn. v. Perry Local Educators' Assn.,* 460 U.S. 37, 45 (1977).

[14] *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 802 (1985).

[15] *Id.*

[16] "There is no doubt that audience time during Waukegan city council meetings constituted a designated public forum." *Surita v. Hyde*, 665 F.3d 860, 869 (7th Cir. 2011). Several other federal appellate courts agree. *Mesa v. White*, 197 F.3d 1041, 1044 (10th Cir. 1999); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990); *Jones v. Heyman*, 888 F.2d 1328, 1331 (11th Cir. 1989). See also *City of Madison Joint Sch. Dist. No. 8 v. Wis. Emp't Relations Comm'n*, 429 U.S. 167, 176 (1976)).

[17] *Heffron v. Int'l Society for Krishna Consciousness, Inc.,* 452 U.S. 640, 648 (1981).

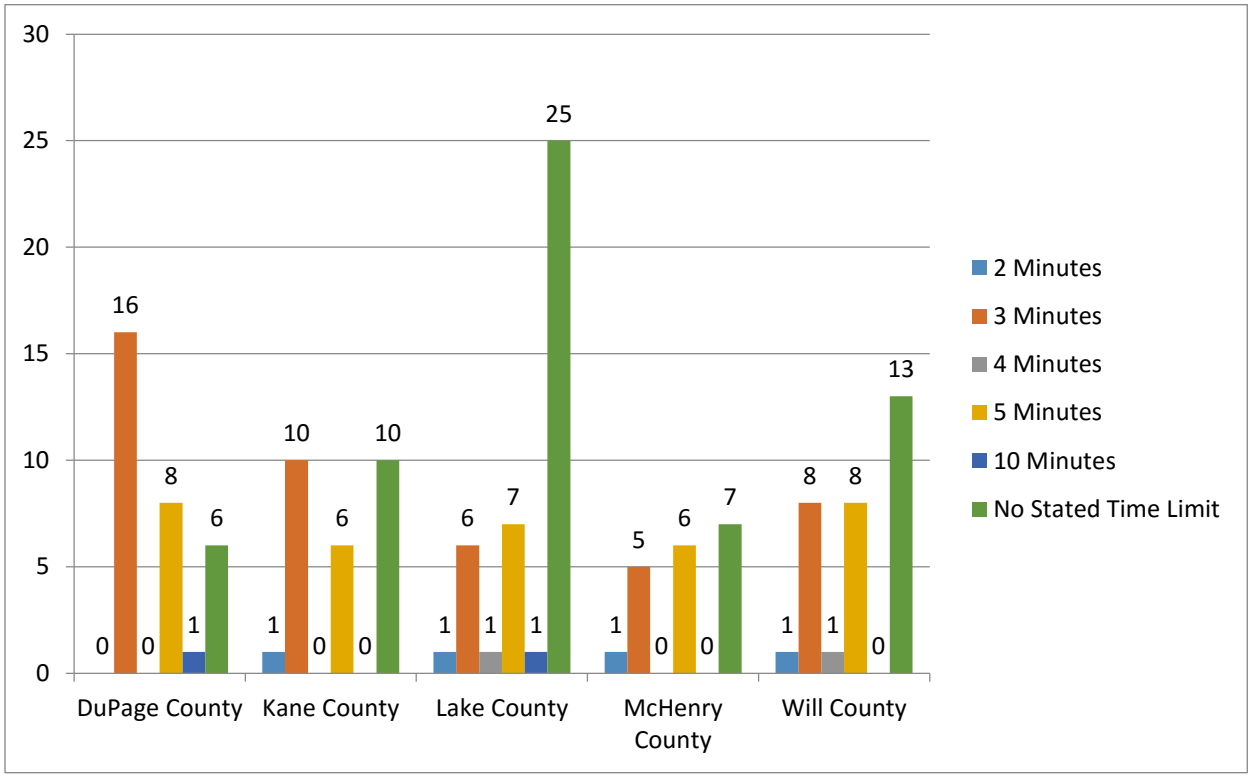
[18] *Id.* (citation omitted).

(1) Time limits on the individual's public comment and on the overall public comment period
(2) Speaker identification requirements
(3) Placement of the public comment period within the meeting agenda, such as at the beginning of the meeting, at the end of the meeting, before each agenda item, or some combination of these

i. Time Limits Imposed on Public Comment Periods and on Individual Public Comments

- Of the 118 municipalities with rules governing public comment periods:
  - 30 municipalities did not impose time limits on individual speakers.
  - 88 municipalities imposed time limits on speaker comments and/or on the entirety of the public comment period. These time limits range from two to ten minutes per speaker and from 10 to 30 minutes for the entire public comment period. The graph below compares the incidences of time limits on individual speakers by county.

Number of Minutes Allowed for Individual Public Comment



ii. Placement of the public comment period within the meeting agenda

Some municipalities that did not codify the right to speak otherwise provided notice to the public by placing public comment on their posted meeting agendas. These public comment periods may be identified differently, such as "Audience Time" or "Public Forum."

iii. Speaker Identification Requirements

Many municipalities recorded rules that required speaker identification of some sort. Public bodies often have a sign-up sheet at the meeting for attendees intending to give public comment, which may require the attendees name, address, and subject matter on which they will comment. This is not prohibited in the OMA, nor required: the statute is silent on the subject. However, notably, a 2014 Illinois Attorney General Public Access Binding Opinion analyzed whether government can require speakers to provide their home addresses prior to giving public comment.[19] The Attorney General found that "the language of section 2.06(g) does not support a requirement that a person must provide his or her complete home address prior to being allowed to make a public comment,[20]" emphasizing that the OMA did not predicate a person's right to speak at an open meeting on their address of residence. The opinion acknowledges that rules governing public comment "may assist in accurate recordkeeping," yet it emphasizes that "their primary purpose is to accommodate a speaker's statutory right to address the public body while ensuring that order and decorum are maintained at public meetings."[21] The Attorney General went on to state that "requiring a member of the public to provide his or her complete address prior to speaking may have a chilling effect on the individuals who wish to speak at public meetings and that a person's right to comment at an open meeting is not contingent upon where he or she resides."[22] The Attorney General concluded by stating that "requiring speakers to state their home addresses prior to addressing public bodies violates section 2.06(g) of OMA, even is such a rule is established and recorded by the public body."[23]

There are other identification requirements that have yet to be analyzed by the Attorney General Public Access Counselor or by the judiciary. Three of the public bodies surveyed in this report differentiated public comment periods during their meetings or the order of speakers

[19] Ill. Att'y Gen. Public Access Op. 14-009.
[20] *Id.*at 6-7.
[21] *Id.*at 6 (citing *I.A. Rana Enterprises v. City of Aurora*, 630 F. Supp. 2d 912, 923-25 (N.D. Ill. 2009)).
[22] *Id.* at 7.
[23] *Id.*

during its meetings between "Residents" and "Non-Residents,"[24] and one municipality required a speaker to provide a phone number.

Below are the findings regarding speaker identification:

- Of the 150 municipalities
    - 48 (32%) required anyone who wished to speak during public comment to identify themselves by signing-in.
    - 44 (28%) explicitly required or asked the speakers to state their names at the beginning of their comments.
    - 35 of the 44 municipalities with the above requirement also required or asked the speaker to state their address.

b. Content-Based Regulations on Public Comment

i. Limitation on the Topic of Public Comments

Community members use public comment periods to raise a broad spectrum of issues of public concern that directly or indirectly relate to the affairs of their community. Yet, government entities have the power to reserve a "limited" public forum, for certain groups or topics.[25] This means that the government is not required to allow persons to engage in every type of speech in a limited public forum,[26] as long as it maintains viewpoint neutrality. "Once it has opened a limited public forum, however, the State must respect the lawful boundaries it has itself set. . . . Thus, in determining whether the State is acting to preserve the limits of the forum it has created so that the exclusion of a class of speech is legitimate, we have observed a distinction between, on the one hand, content discrimination, which may be permissible if it preserves the purposes of that limited public forum, and on the other hand, viewpoint discrimination, which is presumed impermissible when directed against speech otherwise within the forum's limitations."[27] For example, one federal district court in Illinois held that "[a] council does not

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[24] Burr Ridge states in its codified rules, "Comments from non-resident/non-citizens will be heard at the portion of the meeting set aside for "Non-Resident Comments" on the Agenda. A Non-Resident may be permitted to address items on the Agenda, if such person has a demonstrable personal or financial interest in the Agenda item that is separate or distinct from the interests of the general public. The Presidents is authorized to make such determinations, if needed." Burr Ridge, Ill. Code, Sec. 2.67, Rule 16.

[25] *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995); *Steinburg v. Chesterfield County Planning Comm'n*, 527 F.3d 377, 385 (4th Cir. 2008).

[26] In *Steinburg v. Chesterfield County Planning Commission*, a county resident "was excluded from a public meeting because of his refusal to address the topic for which the meeting was opened and because of his disruptive manner." *Steinburg* at 380. The court held that the government body did not engage in viewpoint discrimination. *Id.*

[27] *Rosenberger,* 515 U.S. at 829.

violate the First Amendment when it limits public participants to speaking only about subjects on the agenda."[28]

Municipalities surveyed varied in their approach to topics that may be addressed during public comment. Most municipalities allowed public comment on both agenda items and non-agenda items, so long as the speaker's comments relate to municipal affairs or are matters of municipal concern. A few distinguished the two by allowing comments on non-agenda items during a different portion of the meeting than agenda items. The most restrictive municipalities only allowed public comment on subjects that appear on the agenda of the meeting.

ii. Prohibition on "Repetition" During Public Comment Periods

Public comment periods are an outstanding tool for community members to organize around and collectively voice opinions about an issue of public concern. In response, many public bodies have prohibited "repetitive" comments for the general purpose of maintaining order. Federal courts in different states have examined this issue and have held that government may limit repetition during public comment periods because city councils have a significant government interest in effectively conducting business, and the chair may stop the speaker if the speech becomes irrelevant or repetitious.[29]

Further complicating the issue is the recent U.S. Supreme Court's ruling of *Reed v. Town of Gilbert,*[30] which raises the question whether disallowing "repetitive statements" is a "content-based" restriction. If it can be argued that a ban on "repetitive comments" is based on the content of what one is saying, government entities are required to provide a compelling, rather than a significant, reason for implementing the rule. In *Reed*, the Supreme Court found that a town's sign ordinance was *content-based* on its face because the ordinance had different rules for signs based solely on the content being temporary, political, and ideological.[31] The Supreme Court said that the issue was not if government favored or disfavored the viewpoint of the

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[28] *I.A. Rana Enterprises v. City of Aurora*, 630 F.Supp.2d 912 (N.D. Ill. 2009)(citing *Cornelius v. NAACP Legal Def. & Educ. Fun*d, 473 U.S. 788, 802 (1985). *See also Steinburg* at 385 in which removal from a public meeting for failure to restrict comments to the topic of consideration before the commissioners did not violate the First Amendment.

[29] A federal district court in Illinois has stated: "Because a [c]ity [c]ouncil has a significant government interest in effectively conducting business, the typical First Amendment 'antipathy to content-oriented control of speech cannot be imported to the [c]ouncil chambers intact.' . . . [The chairman of a council meeting may] 'certainly stop [the speaker] if his speech becomes irrelevant or repetitious . . . .'"*I.A. Rana Enterprises v. City of Aurora*, 630 F.Supp.2d 912 (N.D. Ill. 2009)(citing *White v. City of Norwalk*, 900 F.2d 1421, 1425-26 (9th Cir. 1990). See also *Lowery v. Jefferson County Bd. of Educ.*, 586 F.3d 427 (6th Cir. 2009).

[30] *Reed v. Town of Gilbert*, 576 U.S. ___ (2015).

[31] *Id.*

subject matter regulated, but rather that the government must assess the subject matter to determine if the ordinance applied.[32] Laws that are content-based on their face must be subject to strict scrutiny regardless of the motivations of the government, and in *Reed*, the municipality did not meet the higher standard of strict scrutiny.

While there has not been a court ruling published on "repetitive" comment since *Reed*, it is valid to ask whether municipalities would have to meet the higher standard of justifying a content-based restriction because in order to determine if a comment is "repetitive" the chair must actually look to the content of speech.

- 32 (21.3%) municipalities had prohibitions on "repetition."

The manner in which municipalities regulated repetitive comments included:

  - "Comments that have already been made by others shall not be repeated."
  - "Repetitious commentary should be avoided."
  - "Avoid repeating the comments of previous speaker."
  - "Speakers shall refrain from unduly repetitious remarks."
  - "Avoid repeating comments that have been made."
  - "Limit comments to those not yet stated by prior speakers."
  - "The presiding officer may limit repetitive statements."
  - "Speakers shall make every attempt to not be repetitive of points that have been made by others."

iii. Rules Mandating Decorum

Protecting speech that conveys dissent and criticism of government is exactly what the First Amendment serves to protect. At the same time, government entities have a significant interest in running smooth and efficient business meetings. Government bodies that implement decorum rules are usually attempting to minimize meeting disruption.

The validity of "decorum" rules have been litigated in numerous cases, generally holding that a public body has a significant interest in ensuring that order is maintained so as to conduct efficient meetings. However, there is no bright line. Decorum rules that include vague terms such as prohibiting "contentious" comments can leave open disallowing speech based on a dislike of the speaker's viewpoint, thereby infringing on the First Amendment right of speakers. Likewise, a rule prohibiting "negative" comments runs a high risk of the government discriminating against a particular viewpoint: "positive" viewpoints would be allowed under this rule, but no "negative" viewpoints. In *White v. City of Norwalk*, a panel of the Ninth Circuit stated: "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. [W]hen the board sits in

[32] *Id.*

public meetings to conduct public business and hear the views of citizens, it may not be required to discriminate between speakers . . . , or the content of their speech."[33]

At least one federal appellate court has ruled that a government body must be able to illustrate how *allowing* the allegedly disruptive statements would result in *an actual disruption* of a meeting.[34] The government body lawfully enforced the "no repetition" rule because the manifestation of the repetition overlapped with an accompanying rule against meeting disruption, and related to a valid content-neutral speech regulation.[35] Speaking beyond the allotted three-minute rule and by extending the overall public comment period to accommodate individuals who repeat the same message are disruptive to the efficient order of a meeting.[36]

In *Norse v. City of Santa Cruz*, a speaker made a silent Nazi salute and was ejected from the meeting. On appeal, the court found no constitutional offense in the wording of the policy regulating public comment. However, with respect to the policy's application to this speaker, the Ninth Circuit found that the speaker's silent Nazi salute was not disruptive to the meeting and the speaker was ejected because of viewpoint discrimination.

Notably, the government argued it had the authority to define "disturbance" however it chose, which included any violation of its rules of decorum. The court disagreed, stating that an actual disruption was necessary; not a "constructive disruption, technical disruption, virtual disruption, *nunc pro tunc* disruption, or imaginary disruption."[37]

In another case, where a facial challenge to a rule prohibiting personal attacks was tested, the Fourth Circuit held that there was no constitutional offense.[38] The court concluded that a content-neutral policy against personal attacks is not facially unconstitutional if it serves the significant public interest of maintaining decorum and order.[39] But the court went onto warn that its holding "does not preclude a challenge premised on misuse of the policy to chill or silence speech in a given circumstance"[40] because "…a personal attack is surely irrelevant—*unless, of course, the topic legitimately at issue is the person being attacked, such as his qualifications for an office or his conduct.*"[41]

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[33] *City of Madison v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 176 (1976).
[34] 900 F.2d 1421 (9th Cir. 1990).
[35] *Id.* at 1424-26 (9th Cir. 1990).
[36] In *White v. City of Norwalk*, a citizen was ejected from a city council meeting for refusing to stop talking after council members ruled him out of order for being unduly repetitive. 900 F.2d 1421 (9th Cir. 1990)
[37] *Norse v. City of Santa Cruz*, 629 F.3d 966, 976 (9th Cir. 2010).
[38] *Steinburg v. Chesterfield County Planning Comm'n,* 527 F.3d 377 (4th Cir. 2008).
[39] *Id.* at 387 (4th Cir. 2008)(citing *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).
[40] *Id*.
[41] *Id.* (emphasis added).

Notably, this study revealed an 83% increase from 2010 when there were only 24 municipalities with content-based restrictions.

This study found that:

- In 2016, of 150 municipalities
    - 48 municipalities had policies that included content-based regulations on public comment.
    - These policies reflected a combination of mandated "civility" and prohibited "negativity."

Fifteen (10%) municipalities imposed *civility* of some sort. These provisions included:

- "All speakers must maintain proper decorum."
- "All discussion and debate shall be courteous [and] respectful."
- "Civility and a sense of decorum will be strictly followed."
- "Speakers shall be courteous."
- Speakers shall respect the decorum of the meeting and any admonitions as are given them by the meeting's presiding officer to respect the customary requirements of good taste and proper behavior."
- "All participants shall conduct themselves in an orderly and civil manner."
- "All comments must be civil in nature."

Forty-one (27.3%) municipalities regulated *negative* content in some way. Similar to the results in 2010, there were several ways in which municipalities regulated negative remarks. They include prohibitions against:

- "personal attacks,"
- "personal invectives,"
- "personally condescending comments,"
- "personal remarks and impugning of motive,"
- "disrespectful comments,"
- comments that are "slanderous" or "boisterous" or "contentious,"
- "disruptive comments,"
- "offensive or obscene comments or gestures,"
- "threatening language or gestures,"
- "profane remarks,"
- "impertinent remarks,"
- "negative comments,"
- "intemperate language,"
- "language of an insulting nature,"

- “abusive remarks”
- “protracted remarks,”
- “loud language”

III. Best Practices

A. Notice of Public Comment and its Rules Should Be Codified in Local Ordinances

Each municipality should formally codify in their municipal codes the public’s right to give public comment and the rules for the public comment period.

B. Notice of Public Comment and Rules Should Be Easily Visible on the Website and on Agendas

The adopted rules should be readily available on the municipal website in prominent location for public access. Ideally, the rules should appear on meeting agendas to remind members of the public of the rules governing public comment.

C. Consistently Describe the Right to Speak and the Rules Governing It

When rules are documented in more than one location, the rules in each location should be identical, and no location should have more detailed guidelines than another.

D. Placement of Public Comment Periods at Meetings Throughout Agenda

The public body has discretion in where it places public comment on its agenda. For the most robust public participation, governments should allow for opportunities for public comment throughout the agenda:

- After roll call and prior to beginning public body business
- Prior to action items not on a consent agenda
- Prior to executive session
- Prior to adjournment of the meeting

When the last speaker finishes, the chair should ask the members of the public attending the meeting if anyone else who has not had the chance to sign-in but wishes to speak to say so, in order to assure that all members of the public who wished to provide public comment were given the opportunity.

E. Time Limits on the Total Public Comment Period and Per Speaker

Public bodies should place reasonable limits on public comment to both a specific time frame for the entire public comment period, and per speaker.

- Consistent with the survey's findings, CAC recommends 30 minutes for public comment in totality, with allowance for extra time allocated for special circumstances when there are a significant amount of members of the public seeking to give public comment.
- Consistent with survey's findings, CAC recommends 3-5 minutes per speaker to provide sufficient time per individual.
- Time allotment per speaker is uniformly enforced.
- A visible timer and a reminder at the final 15 seconds signaling the speaker should wrap up their comments.

F. Sign-in

Do not *require* sign-in for public comment at government meetings, but *offer* sign-in so that the public body may gauge the number of speakers.

G. Forego Content-Based Restrictions in Public Comment Rules

Public bodies should not implement content-based restrictions in their public comment rules to encourage public participation rather than intimidate attendees from their right to speak. Where content-based rules are adopted, include a statement regarding the public's right to criticize government. For example, California's open meeting laws "[p]rohibit[] the legislative body of a local agency from prohibiting public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the local legislative body, and provides that nothing in this provision shall confer any privilege or protection for expression beyond that otherwise provided by law." Cal. Gov't Code tit. 5, ch. 9, sec. 54954.3(c).