



# CITY OF VICTOR

PHONE (208) 787-2940 | [www.victoridaho.gov](http://www.victoridaho.gov)

## City Council Staff Report

REPORT DATE: July 18, 2024

MEETING DATE: July 24, 2024

SUBJECT	<b>Adoption of a Public Comment Policy</b>
ITEM TYPE	<input type="checkbox"/> Public Hearing <input type="checkbox"/> Work Session <input checked="" type="checkbox"/> Action Item
PRESENTER	Jeremy Besbris, City Administrator

### APPLICABLE VICTOR VALUES

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Culturally Historic | <input type="checkbox"/> Sustainable     | <input type="checkbox"/> Connected to Nature            |
| <input type="checkbox"/> Small Town Feel     | <input type="checkbox"/> Family Friendly | <input checked="" type="checkbox"/> Administrative Need |

### PURPOSE & PROCESS

The purpose of this item is to consider the adoption of a Public Comment Policy designed to achieve several important objectives:

1. To promote meaningful civic engagement: By providing clear guidelines for public comment, the city aims to encourage constructive dialogue between citizens and city officials.
2. To ensure equitable representation: This policy prioritizes input from those most directly affected by city decisions, helping to amplify the voices of Victor residents, property owners, and local business operators.
3. To maintain meeting efficiency: By establishing time limits and relevance criteria, we can ensure that City Council meetings remain focused and productive while still allowing for public input.
4. To enhance transparency: Clear rules for public comment contribute to a more open and understandable governmental process.
5. To comply with legal requirements: This policy helps ensure that our public comment procedures align with relevant laws and regulations.

### BACKGROUND/ALTERNATIVES

The need for this policy arises from our commitment to fostering an environment where public input is valued, relevant, and constructive. It allows us to balance the importance of public participation with the need for efficient and effective city governance. By clearly outlining the rules and expectations for public comment, we aim to create a respectful and productive forum for civic engagement that serves the best interests of our community.

This policy applies to all forms of public comment during City Council meetings, ensuring consistency and fairness across different portions of our meetings. We believe this comprehensive approach will contribute to more meaningful public participation and better-informed decision-making for the City of Victor.

**ATTACHMENTS**

Draft Public Comment Policy  
AIC Public Comment Presentation

**FISCAL IMPACT**

N/A

**STAFF IMPACT**

N/A

**LEGAL REVIEW**

Reviewed

**RECOMMENDATION**

Staff recommends the Council approve the Public Comment Policy as drafted

**SUGGESTED MOTION**

I moved to approve the Public Comment Policy as presented to the council and direct the clerk to post a summary of the policy on the city's website under the city council meeting page.

Alternative Motion: I move to approve the Public Comment Policy as amended by the council and direct the clerk to post a summary of the policy on the city's website under the city council meeting page.

[General Vote]

## **Public Comment Policy**

The City of Victor values public input and encourages citizen participation in local government. To ensure that comments are relevant to city affairs and represent those most directly affected by city decisions, the following policy has been established for public comment periods during City Council meetings:

### **Eligibility for Public Comment:**

Public comments will be limited to individuals who meet at least one of the following criteria:

- (1) Current residents of the City of Victor
- (2) Property owners within the City of Victor limits
- (3) Owners or operators of businesses registered in the City of Victor
- (4) Individuals directly impacted by City of Victor activities or decisions

### **Verification Process:**

Individuals wishing to make public comments may be asked to verify their eligibility. This may include:

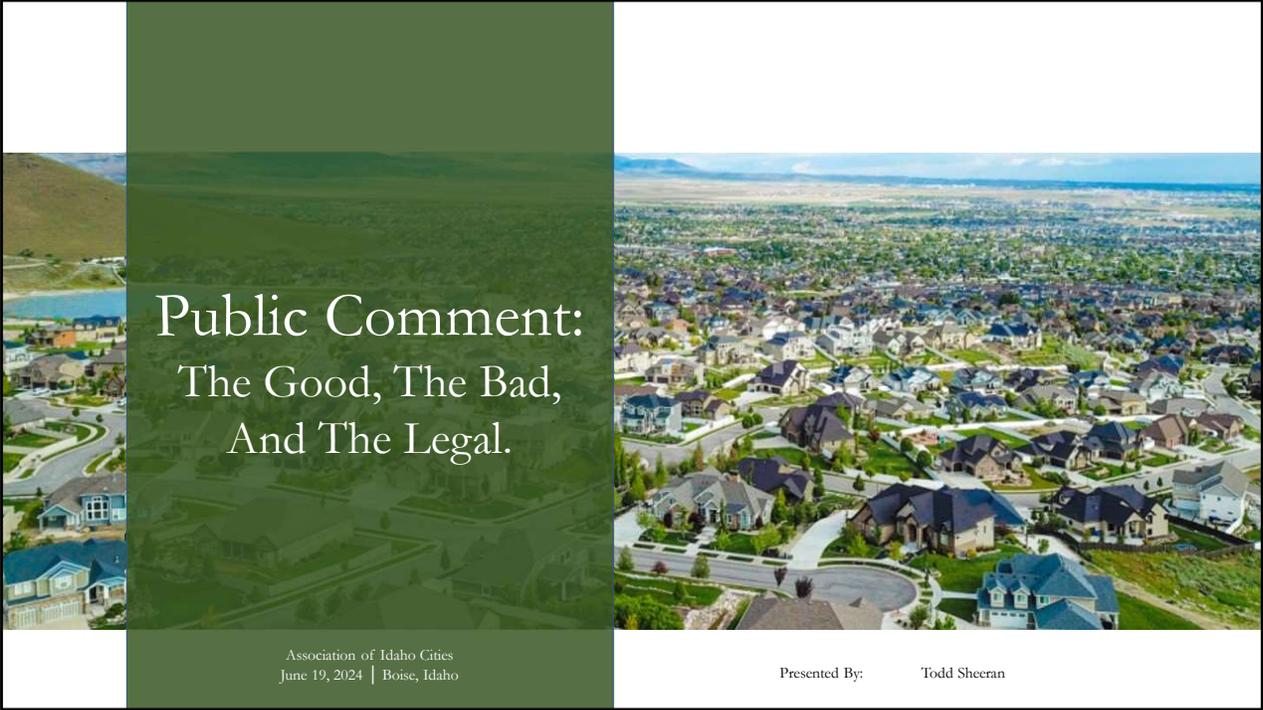
- Proof of residency (e.g., utility bill, driver's license)
- Property ownership documentation
- Business registration information
- Evidence of direct impact by city activities

### **Comment Procedures:**

- Eligible individuals must sign up to comment before the meeting begins.
- Comments are limited to 3 minutes per person unless extended by the Mayor.
- Comments must address city business or issues within the City's jurisdiction.
- Speakers must state their name and basis for eligibility (e.g., resident, business owner) for the record
- The Mayor reserves the right to waive these restrictions in special circumstances or for matters of broad public interest that extend beyond city limits.

This policy aims to prioritize the voices of those most directly affected by City decisions while maintaining an open and transparent government process. The City of Victor appreciates your understanding and cooperation in implementing this policy.

Note: This policy applies to regular public comment periods and may be adjusted for public hearings or other special meetings as required by law or deemed appropriate by the Mayor.



# Public Comment: The Good, The Bad, And The Legal.

Association of Idaho Cities  
June 19, 2024 | Boise, Idaho

Presented By: Todd Sheeran



## Public Comment

- Does this ring a bell?
- How many of you have experienced people “caring loudly” at you?





## Outline

- Public Comment and the Constitution
- Required public hearings in Idaho
- What you can do to regulate public comment
  - Identifying protected speech and its exceptions
  - Identifying the type of “forum” your entity has created
- Common public comment regulations
- Be aware of retaliation claims
- Tips



## Public Comment and the Constitution





## The First Amendment and First Amendment Claims



### 42 U.S.C. § 1983

No one shall be deprived "of any rights, privileges, or immunities secured by the Constitution and laws..."

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The Fourteenth Amendment requires, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States..." *See also Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) ("The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech."")



## Public Comment and the First Amendment

- Does the First Amendment apply to public meetings?
- It depends....
- **On one hand:** "The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy." *Minn. State Bd. for Cmty. Colleges v. Knight*, 465 U.S. 271 (1984).
- **On the other hand:** States can mandate public comment, and councils can (and often do) impose public comment periods on themselves.

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5 Tex. Gov. Code § 551.007  
Utah Code § 52-4-201.3.



## Public Hearing Requirement in Idaho

- Incorporating
- Annexations
- Amendments to a general plan
- Variances
- Adopting zoning ordinances
- Passing a development agreement
- Transfer of development rights
- Removal of certain appointed officers
- Civil service suspension appeals
- Disposing or vacating property
- Adopt/modify an urban renewal plan
- Establish or disestablish a business or improvement district
- Annual budget
- Hearings on objections to proposed utility assessments

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50-1002 (annual budget)

50-102 (incorporating)

50-222 (annexations)

50-3106 (amendments to a general plan)

67-6516 (variances)

67-6511 (adopting zoning ordinances)

67-6511A (passing development agreement)

50-1609 (civil service suspension appeals)

50-1403 (disposing or vacating property)

50-2906 (adopt/modify an urban renewal plan)

50-2618, 2605, and 1710 (establish or disestablish a district)

50-2512 (hearings on objections to proposed utility assessments)

50-206 (removal of certain appointed officers)



## Public Hearings/Comments in Your Community

- What public hearings do you have that are not required?
- Why do you have public hearings beyond what state law requires?



## What Do You Do About This?





Or This?

**This video contains content related to domestic violence. This topic may be triggering to some.**

**View discretion is advised.**



# What Happens When You Take Away Public Comment Period?



## Mayor announces return of public comment section for Pocatello Council meetings

Published at 12:45 pm, October 17, 2023  
Updated at 1:00 pm, October 17, 2023



Logan Ramsey, EastIdahoNews.com



The Pocatello town hall meeting on Monday. | Logan Ramsey, EastIdahoNews.com



## Public Comment Policy

- What should your public comment policy look like?



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## What Can You Do To Control Public Comment?

- **Step One:** You first must determine whether the speech is protected by the First Amendment.
- The answer to this question, in a public meeting setting, is almost always yes – what people say is generally protected by the First Amendment. In fact, most governmental entities concede this question.
- However...



## Exceptions to Protected Speech

- **Incitement to Imminent Lawless Action** (*Brandenburg v. Ohio*, 395 U.S. 444 (1969)).
- **True Threats** (*Virginia v. Black*, 538 U.S. 343 (2003)).
- **Defamation** (*Gertz v. Robert Welch*, 418 U.S. 323 (1974); and see *McKee v. Cosby*, 139 S. Ct. 675 (2019)).
- **Obscenity and Child Pornography** (*Miller v. California*, 413 U.S. 15 (1973))
- **Fighting Words** (*Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)).

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# GAME TIME: PROTECTED OR NOT PROTECTED



Is this speech protected by the First Amendment?

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Protected. See *McBreairty v. Sch. Bd. of RSU22*, 616 F. Supp. 3d 79 (D.C. Me. July 20, 2022)



## GAME TIME: PROTECTED OR NOT PROTECTED



- At a Q&A with the re-elected mayor, a resident was asked to leave by one of the officers. On her way out, the resident looked at the officer in a "fierce kind of way" and muttered "a\*\*hole," "son of a b\*\*\*\*," and "Opie-Taylor-looking motherf\*\*\*\*\*" to the officer.
- Protected speech?

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Protected. See *Osborne v. Lohr-Robinette*, 2006 U.S. Dist. LEXIS 92275 (D.C. W. Va. Dec. 20, 2006). Note: Even though the court found the speech protected, the defendants had qualified immunity "because at the time it was not clearly established that plaintiff's speech was constitutionally protected."



# GAME TIME:

PROTECTED OR NOT PROTECTED



Protected  
speech?

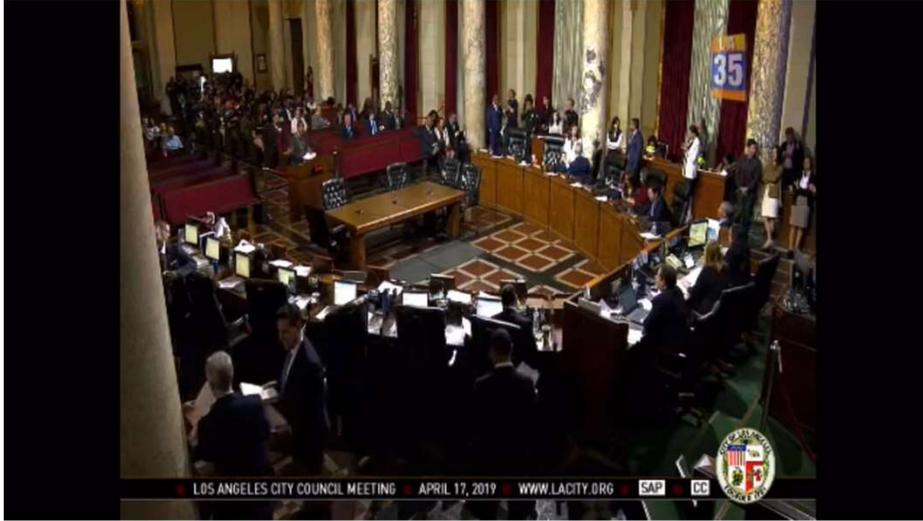
17

Protected. See *Mama Bears of Forsyth Cty. v. McCall*, 2022 U.S. Dist. LEXIS 234538 (D.C. Ga. Nov. 16, 2022).



# GAME TIME:

PROTECTED OR NOT PROTECTED



Protected  
speech?

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Not protected. See *City of Los Angeles v. Herman*, 54 Cal. App. 5<sup>th</sup> 97 (2<sup>nd</sup> Dis. Ct. Aug. 10, 2020).



# GAME TIME:

PROTECTED OR NOT PROTECTED



Protected  
speech?

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Protected. *See Draego v. City of Charlottesville*, 2016 U.S. Dist. LEXIS 159910 (D.C. W. Va. Nov. 18, 2016).



## Court Analysis: Step 2 - Forum

- **Step two:** If the speech is protected, the court must next "identify the nature of the forum" in which the speech occurred.
- For government property, there are four categories of forums:
  - **Traditional public forums** – public places usually associated with the ability to freely express themselves (e.g., parks and sidewalks).
  - **Designated public forums** - places not normally a traditional forum, but the government intentionally opened it up.
  - **Limited public forums** – property limited to use by certain groups or dedicated solely to the discussion of certain subjects.
  - **Nonpublic forum** – places where it is clear that the entity did not intend to create a public forum.

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*See Christian Legal Soc'y Chapter of the Univ. of Cal. v. Martinez*, 561 U.S. 661, 679 n.11 (2010); *Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330, 347 (5<sup>th</sup> Cir. 2001); *Tyler v. City of Kingston*, 74 F.4<sup>th</sup> 57 (2<sup>nd</sup> Cir. 2023).



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## How Are They Created?

### **Designated Public Forum**

- When you have a general public comment period and allow anyone to say whatever they want during their designated time.
- E.g., an “open mic” comment period.

### **Limited Public Forum**

- When you have a general public comment period, but you restrict the comments to something related to municipal business.
- E.g., “Public comment must relate to items within the purview of the municipality.”



## Why Does It Matter?

### Designated Public Forum

- Any time you prohibit someone from speaking, for whatever reason, the court will need to find that the reason is “content neutral” and “narrowly drawn to effectuate a **compelling state interest.**”

### Limited Public Forum

- If a speaker is prohibited from speaking in a limited public forum, the reason "need only be **viewpoint neutral and reasonable.**"

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A municipal example is having a neighborhood meeting.

*McBreairty v. Sch. Bd. of RSU22*, 616 F. Supp. 3d 79 (D.C. Me. July 20, 2022) (quoting *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45 (1983).

*Perry*, 460 U.S. at 46.

*Hotel Emples. & Rest. Union, Local 100 v. City of N.Y. Dep't of Parks & Rec.*, 311 F.3d 534, 552 (2<sup>nd</sup> Cir. 2002).

*Id.* at 546.

*Bronx Household of Faith v. Cmty. Sch. Dist. No. 10*, 127 F.3d 207, 212 (2<sup>nd</sup> Cir. 1997)

See also *Tyler v. City of Kingston*, 74 F.4<sup>th</sup> 57 (2<sup>nd</sup> Cir. 2023)



## Comparison

### **Designated Public Forum**

- Con: If a city denies public comment, there is a higher chance of the city losing a First Amendment case.
- Pro: More flexibility for people to speak freely, and less issues with inconsistent enforcement.

### **Limited Public Forum**

- Pro: If a city denies public comment, there is a better chance of the city winning a First Amendment case.
- Con: Less flexibility for people to speak freely, and more issues with inconsistent enforcement.



## Analysis

- Remember the guy who claimed that the increase in people being raped is because of the Muslim migrants?
- If the city had a “limited” public forum instead of a “designated” public forum, the city would have likely won that case.





## Take Away

- Limited public forums offer more protections against stopping a speaker from giving comment when the speaker isn't saying anything relevant to the municipality.
- E.g., asking the council to “make statements against the Gaza war.”
- Designated public forums almost always allow a speaker to say whatever they want.
- This can include crude and vulgar language.

# Public Comment Regulations



## Common Regulations

- Requiring names
- Requiring residency
- Time restrictions
- Irrelevant comments
- Disrespectful or attacking comments
- Signs during public meetings
- Profanity/vulgarity/obscenity
- Online vs in-person comments
- Recording of public comment



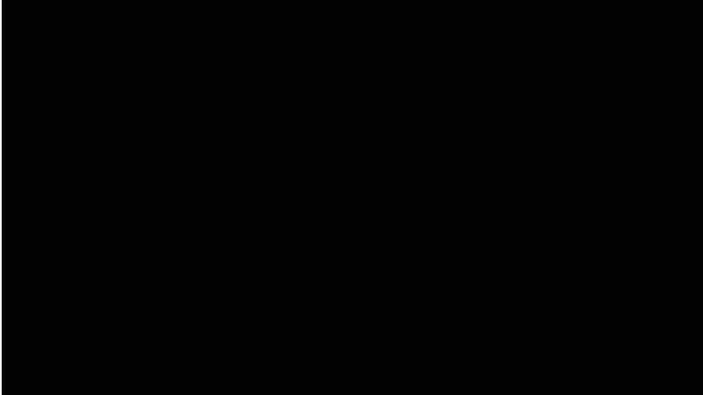
## General Rule

"There is a significant governmental interest in conducting orderly, efficient meetings of public bodies."

- *Rowe v. City of Cocoa*, 358 F.3d 800, 803 (11<sup>th</sup> Cir. 2004).



## What About Requiring Names?



- Requiring a speaker to announce their name before giving public comment does not violate the First Amendment .

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*See Miller v. Goggin*, \_ F. Supp. 3d \_ (E.D. Pa, May 5, 2023).



## What About Requiring Residency?

- Courts have upheld a bona fide residency requirement as a reasonable speech restriction in a limited public forum. *See, e.g., Rowe v. City of Cocoa*, 358 F.3d 800, 803-04 (11<sup>th</sup> Cir. 2004) ("It is reasonable for a city to restrict the individuals who may speak at meetings to those individuals who have a direct stake in the business of the city").





## Policy Example



The Salt Lake Tribune

DONATE

### Public comment returns to St. George City Council meetings — with new rules

The mayor 'paused' such comments this month after disruptions and accusations of being 'communists.'



According to the mayor's statement Tuesday, those wishing to comment at City Council meetings must live in St. George and provide their name and address to the city recorder. The public cannot comment on "any agenda item or pending land use application" — just "City business."



## Requiring A Person To State Their Physical Address

- The right of free speech “includes both the right to speak freely and the right to refrain from speaking at all.”
- “Requiring the speaker to announce their specific home address is an unreasonable restriction” because of “the chilling effect of being forced to announce to all present one’s actual home address before speaking on a hotly-contested issue.”

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*Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2463 (2018).  
*Marshall v. Amuso*, 571 F. Supp. 3d 412 (E.D. Pa. 2021).



## What About Time Restrictions?



- A time limit for speakers serves "a significant governmental interest in conserving time and in **ensuring that others had an opportunity to speak.**" *Wright v. Anthony*, 733 F.2d 575 (8<sup>th</sup> Cir. 1984). *See also Shero v. City of Grove* 510 P.3d 1196 (10<sup>th</sup> Cir. 2007) (time limitations "promote orderly and efficient meetings.")



## What About Limiting the Total Time Per Item?

- Courts have found that a municipality may limit the total time per topic.
- But...

### Salt Lake City Council's approval of cap on public comments prompts rowdy protest

By Carter Williams, KSL.com | Posted - March 5, 2024 at 10:30 p.m.



A protester reads from a book while the Salt Lake City Council attempts to resume a meeting Tuesday night. The meeting was delayed nearly 30 minutes by disruptions from a group opposed to the council's new public comment policy. (Salt Lake City Corporation)



## What about Irrelevant Comments?



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## Continued

- Public comment trolling is becoming a major internet sensation and a problem for municipalities around the United States.
- Subject to state law, a municipality may (**and should**) limit discussion during the comment period to topics related to municipal business.
  - **You can likely only do this if you create a limited public forum.**

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*See Madison Joint School Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 176 n. 8 (1976); *see also Gagnon-Smith v. City of Middletown*, 2004 U.S. Dist. LEXIS 5560 (D.C. Conn. 2004); and *White v. Norwalk*, 900 F.2d 1421 (9<sup>th</sup> Cir. 1990).



## What About Criticisms of Public Officials?



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*See also Lozman v. City of Riviera Beach*, 138 S. Ct. 1945 (2018)



## Continued

Courts have said this about criticizing public officials:



• Actually, courts have said this:

- "Public officials may need to have **thicker skin** than the ordinary citizen when it comes to attacks..."

- *Mattox v. City of Forest Park*, 183 F.3d 515, 522, (6<sup>th</sup> Cir. 1999)

• And this:

- "It is asking much of City Council members, who have given themselves to public service, to tolerate profanities and personal attacks, but **that is what is required by the First Amendment.**"

- *Dowd v. City of L.A.*, 2013 U.S. Dist. LEXIS 111435, p. 61 (C.D. Cal. Aug. 7, 2013)

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## What About Signs During Public Meetings?

- In *Tyler v. City of Kingston*, 74 F.4<sup>th</sup> 57 (2<sup>nd</sup> Cir. 2023), the council was scheduled to hold a public meeting to discuss whether the City would purchase an armored rescue vehicle. Several activists planned to protest the purchase and bring non vulgar or obscene signs (e.g., "No Tanks No Thanks!" and "Oh my God! No Tank! Move on!!")
- Getting word of the protest, the council (a few days earlier) passed a No Signs policy for city hall.
- The court held that "Plaintiffs have not adequately alleged that the sign prohibition was unreasonable in relation to the City's common-sense interest in running efficient and orderly meetings."

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## What About Profanity / Vulgarity?

- Courts are split on the question of whether profane remarks constitute protected speech.
- One court observed that "whether profane speech is constitutionally protected may in fact depend on its context and thus, it is not categorically protected or unprotected."



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*See Knots v. Or. Trail Sch. Dist. 46*, 2017 U.S. Dist. LEXIS 178441 (D.C. Or. Oct. 26, 2017).



## What About Online Comments?





## Continued

- You can prohibit online comments if you have physical comment period at the council meeting.
  - **Possible exception:** accommodation requests under the ADA. *See Barich v. City of Cotati*, 2022 U.S. Dist. LEXIS 222435 (N.D. Cal. Dec. 9, 2022).
- Require the camera to be turned on, name to be given, and residency stated.



## What About Not Recording or Broadcasting the Comment Period?

- One court has held that denying the listening of public comments online does not violate the First Amendment. It also held that there is no First Amendment right to observe public comment outside of the physical location provided by the town.

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*Potanovic v. Town of Stony Point*, 2023 U.S. Dist. LEXIS 8045 (S.D. N.Y. Jan. 17, 2023)



## Retaliation - *MacIntosh v. Clous* (6<sup>th</sup> Cir. 2023)

- Patricia MacIntosh expressed her concern about the Commission's prior invitation to and endorsement of the Proud Boys, a group that has been designated an extremist group and a hate group. She requested that the Commissioners make a public statement condemning the group's violent behavior.
- In response, a commissioner did this:



## MacIntosh v. Clous - Clip



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## MacIntosh v. Clous

- After the district court denied Clous' motion to dismiss, Clous appealed the decision to the Sixth Circuit.
- The Sixth Circuit held that the "facts alleged in the Complaint also demonstrate that **Clous's threat would deter a person of ordinary firmness from speaking at future meetings**" and its plausible that "**Clous is not entitled to qualified immunity** because it was clearly established that Clous's conduct violated MacIntosh's First Amendment rights."

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*MacIntosh v. Clous*, 69 F.4th 309, 317 & 321 (6<sup>th</sup> Cir. 2023)



## Pro Tips

- Regardless of whether you allow a general public comment period, create a public comment policy.
- The policy should include:
  - A robust purpose statement e.g., “There is a significant governmental interest in conducting orderly, efficient meetings of the municipality.”
  - An understanding that the municipality has created a **limited** public forum and comments need to relate to municipal business or issues within the council’s purview.
  - Clear statements of restrictions e.g., residents only, time constraints per person.
  - Spell out the consequences if the public comment policy is not followed.



## Pro Tips

- Publish your public comment policy and have it available online *and* in print at the meeting (next to the public comment sign in card).
- Require anyone giving public comment to fill out a public comment card. The card should include:
  - The person's name,
  - The person's address, and
  - Acknowledgment that they will adhere to the public comment policy.



## Pro Tips

- Time limits do not represent lack of interest
  - Mutual respect of all speakers
  - Key points heard
- Coaching public on participation can be helpful
  - Where emotion, conviction (including intimidation) have been effective before.



## Pro Tips

- Strategy meetings between Mayor & City Department Heads prior to meetings
  - Anticipate issues and appropriate responses
  - Can staff help clarify informational issues?
  - Can/Should an issue be separated into parts?
  - Is further work needed?



## Pro Tips

- Consider holding meetings between staff & stakeholders
  - Public has all info the municipality has
  - Public knows the governing body understands their concerns
  - Possible resolutions can be explored
- Staff encourages public respect of officials
  - Take breaks when issues get heated
  - Use humor, as appropriate



## Questions?

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