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TRAINING BULLETIN

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DISTURBANCES AT CITY MEETINGS

This memorandum provides some guidance on the procedures for addressing disturbances at City meetings. Although the procedures set forth in this memorandum might be implemented only rarely, it is important to have some Rules in place should they be required.

ISSUE

May the mayor cause person(s) who disrupt city council meetings to be removed or arrested because of such a disturbance?

CONCLUSION

Yes. Cities may adopt rules and procedures to conduct orderly meetings. Persons who intentionally violate commonly accepted or established rules of decorum and procedure so as to interfere with a city council meeting may be removed and/or arrested for such disturbances.

ANALYSIS

City council meetings are often opportunities for persons to express their displeasure and/or support for particular matters being considered by the city council. Some may consider such meetings the quintessential opportunity to exercise their First Amendment rights. It is important, however, to remember that city council meetings are also government proceedings that are necessary to conduct city business. Accordingly, one must understand that a city may impose limitations upon persons attending city council meetings in order to help facilitate the orderly progression of such meetings.

A. First Amendment Expression.

The right to petition government and free speech are activities protected by the United States and California Constitutions. These protections, however, are not unlimited. The United States Supreme Court recognizes that

“[e]ven protected speech is not equally permissible in all places and at all times. Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government

property without regard to the nature of the property or to the disruption that might be caused by the speaker's activities.”

B. Public Forums.

The validity of restrictions on protected activities depends on the type of forum being regulated. Three recognized “forums” determine the extent of government regulation over protected expression: (1) traditional public forums; (2) designated (or limited) public forums; and (3) “nonpublic” forums. The less public a forum, the more government regulation of protected expression can increase.

1. Nature of the Forums

Traditional public forums are those customarily used by the public for the free exchange of ideas. Public streets and parks are recognized as traditional forums. Government restrictions in traditional public forums are permissible only if the limitation is narrowly tailored to serve a “compelling” interest. Limited public forums are those designated to be used for a specific purpose. Although a city can exclude persons wishing to use a limited public forum for reasons outside the forum’s purpose, it cannot exclude any person engaging in permitted activity.

Nonpublic forums are those where “the principal function of the property would be disrupted by expressive activity. . . .” Thus military reservations and jails are neither traditional nor limited public forums.

2. City Council meetings are limited public forums.

Courts have recognized that the public has “an enormous first amendment interest in directing speech about public issues to those who govern their city.” City council meetings, however, are “still . . . a governmental process with a governmental purpose.” Because of this, a city council meeting is, necessarily, a highly structured public forum. Although city council meetings do not necessarily fit into one type of forum or another, it appears that, at a minimum, they are limited public forums. A city may, therefore, regulate the activities of persons attending a city council meeting to facilitate the orderly progression of the meeting. Such regulations, however, must govern the actions of a person; they cannot constrain the content of that person’s speech.

C. Willful disturbance of a city council meeting is unlawful.

Penal Code § 403 states, in relevant part, that

“[e]very person who . . . willfully disturbs or breaks up any . . . meeting that is not unlawful in character . . . is guilty of a misdemeanor.”

The term “disturb” and the phrase “breaks up” are not defined in the Penal Code. However, the California Supreme Court has interpreted this Penal Code section to apply when

“the defendant substantially impaired the conduct of [a] meeting by *intentionally committing acts in violation of implicit customs or usages or of explicit rules for governance of the meeting*, of which he knew, or as a reasonable [person] should have known.”

The nature of a particular meeting will help determine whether or not there was a disturbance. Thus, for example, “[t]he customs and usages at political conventions may countenance prolonged, raucous, boisterous demonstrations as an accepted element of the meeting process; similar behavior would violate the customs and usages of a church service.”²¹ Shouting, yelling, and clapping have all been held to be sufficiently disruptive to permit persons to be removed from and/or arrested at local government meetings.

As noted above, a city council may adopt rules and procedures for the orderly conduct of its meetings. If a person disrupts a meeting, the city council may, in addition to having a person arrested, remove the person disturbing the meeting and/or clear the meeting room. The city may use police officers to enforce its rules:

“[t]he mayor or other officer in control of the police force in a city shall direct a sufficient number of [police officers] to attend and keep order at any public meeting in the city at which . . . a breach of the peace may occur.”

D. City Council meeting rules

El Segundo Municipal Code (“ESMC”) states as follows:

“It is unlawful for any person present at any council meeting, and while the council is in session, to fail or refuse to be seated or remain quiet when ordered or commanded so to do by the mayor or mayor pro tempore. On order of the mayor or mayor pro tempore it shall be the duty of the chief of police or of any police officer of the city to eject from any meeting of the city council any person who disturbs any meeting of the council or who fails or refuses to be seated or remain quiet when ordered or commanded so to do by the mayor or mayor pro tempore. No such ejection, however, shall release or relieve the person so ejected from prosecution for any violation of this section.”

There are, therefore, rules in place for the orderly conduct of City Council meetings (“Rules”).

E. Options to ensure orderly progression of city council meetings.

There are several options available to the mayor when seeking to enforce the Rules and/or other rules of decorum that are intended to help keep order during a city council meeting. Of course, the first option available to the mayor to correct disruptive behavior is to ask for voluntarily compliance with the Rules and/or commonly accepted rules of etiquette. If this is unsuccessful, the mayor should consider the options listed below.

Before acting upon any of the suggested options, it is important to focus on the nature of the activities, i.e., is the behavior actually disrupting the meeting or is the viewpoint of the individual simply objectionable. If the behavior is impeding the orderly progress of a

meeting, then additional actions may be warranted. An objectionable viewpoint, however, cannot be the sole basis for having a person removed, clearing the City Council Chambers, or arresting an individual.

Under all circumstances, the mayor should refer to the attached script when warning person(s) regarding their conduct. The attached script *must*, however, be substantially followed if an individual is to be arrested pursuant to Penal Code § 403. The reason for this is that the script gives an individual notice that he or she is violating an explicit or implicit rule of conduct and gives that person the opportunity to stop behaving in that manner. Any continuance of the behavior, therefore, would constitute a knowing violation of Penal Code § 403.

1. Removing individuals who are interrupting the meeting.

The Government Code states, in part, that

“[i]n the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by *the removal of individuals who are willfully interrupting the meeting*, the [city council] may order the meeting room cleared and continue in session.”

As seen by the emphasized language, the mayor may have persons who are willfully interrupting a city council meeting removed from the City Council Chambers. Police officers may be used to remove an individual.

2. Clearing City Council Chambers.

As noted above, Government Code § 54957.9 allows the City Council Chambers to be cleared if the conduct of people interferes with the orderly progression of a city council meeting.

If the City Council Chamber is cleared, the city council may continue its session, but must only consider matters on the agenda and must allow representatives of the news media (except those involved with the disturbance) to remain within the chambers. The city council may establish procedures for readmitting persons into the council chambers who were not involved with the disturbances. Again, police officers may be used to clear the City Council Chambers.

3. Have person disturbing the meeting be arrested.

Penal Code § 403 makes it unlawful for a person to willfully disturb a city council meeting. Arresting a person pursuant to this Penal Code section, however, is a drastic step that should be taken only after the mayor does the following:

- Advises the person disturbing the meeting that the intentional disruption of a meeting violates California law;
- Identifies what actions are disturbing the meeting;

- Advises the person that if the actions continue, that the person will be arrested;
- Recesses the meeting for a period of time;
- If the disturbance continues, give the person an additional warning regarding California law; and
- Should the person persist, directs the police officer(s) attending the meeting to arrest the person.

These steps are outlined in the attached script.

F. Responsibilities of police officers with regard to Penal Code § 403.

As discussed above, Penal Code § 403 makes it a misdemeanor to disrupt a lawful meeting through unlawful means. This opinion assumes that all city council meetings are lawful; it also assumes that the mayor will use the script that is attached to this opinion. A person who was thus warned about his or her behavior would be engaging in unlawful activities to disrupt a lawful meeting.

The expectation of the City Attorney's office is that a police officer will be present within the City Council Chambers to witness the warning(s) given by the mayor and a person's continued disruption of a city council meeting. A police officer should therefore have sufficient probable cause to take a person into custody for violating Penal Code § 403.

Even if a police officer does not believe there is sufficient probable cause, however, the police officer should nevertheless take the person into custody. The mayor's actions may be considered a citizen's arrest, particularly since the mayor is empowered to keep order at city council meetings. In California,

“every . . . peace officer has a mandatory duty to receive custody of a person who has been placed under citizen's arrest when requested to do so by the person who made the arrest whether or not the officer believes there are grounds for making a complaint against the person arrested.”

A police officer should take the person identified by the mayor into custody pursuant to Penal Code § 142. The police officer would subsequently act in accordance with Penal Code § 849.

Under all circumstances, therefore, if the mayor determines that a person is disrupting a city council meeting (as outlined by this Opinion), has warned that person (as set forth in the script), and has directed that the person be arrested, then a police officer should put that person into custody.

PROCEDURES REGARDING DISTURBING CITY COUNCIL MEETINGS

(Announcement by Mayor)

As the City's Mayor, and the person in charge of this City Council meeting, I am advising you that the California Penal Code provides that persons who willfully disturbs or breaks up any lawful meeting without authority of law is guilty of a misdemeanor.

Your act of _____ is seriously disrupting this meeting. I must ask you to immediately cease your disturbance. If you continue disrupting this meeting, I will ask for your arrest under Penal Code § 403.

At this time I am going to recess this meeting for _ [15] _ minutes. We will thereafter reconvene this meeting.

(Recess and call for police to be present when meeting reconvenes. If the disturbance continues after reconvening the meeting, give the following announcement:)

As the City's Mayor, and the person in charge of this meeting, I am again advising you that the Penal Code provides that persons who willfully disturbs or breaks up any lawful meeting without authority of law is guilty of a misdemeanor. Your act of _____ is seriously disrupting this meeting. If you do not immediately cease disrupting this meeting, I will ask for your arrest under Penal Code § 403.

(If the disturbance continues, request the police to come forward and make an arrest.)