



CML's 94th Annual Conference June 21 - 24, 2016 Vail, Colorado

The contents of this presentation reflect the view of the presenter, not of CML. 



Handling Conflicts at Governing Body Meetings

Tami A. Tanoue
General Counsel / Deputy Executive Director, CIRSA
June 22, 2016

The contents of this presentation reflect the view of the presenter, not of CML. 

Introduction

- Citizens think of "City Hall" and associated facilities as "belonging" to them
- Citizens are accustomed to a high degree of access to and responsiveness/transparency from their local government officials
- Sometimes, though, those expectations can create concerns from standpoint of safety, efficiency, and order
- Every municipality has dealt with challenging citizen situations
- This presentation deals with difficult people and situations – not necessarily aggressive or threatening people or situations – at governing body meetings
 - Dealing with aggressive or threatening people presents different issues and solutions, and requires special expertise

The contents of this presentation reflect the view of the presenter, not of CML. 

Introduction

- What's at stake here?
 - A good meeting is a thing of beauty!
 - But without appropriate regulation, good meetings can go bad...become unruly, unproductive, or worse
 - With inappropriate regulation, liability can result
 - First Amendment rights apply to public participation in governing body meetings
 - "Content" restrictions or prohibitions are constitutionally problematic
 - "Time, place, and manner" regulation is OK
 - Dealing with actual disruptions is OK
 - First Amendment violations = civil rights liability

The contents of this presentation reflect the view of the presenter, not of CML.



Introduction

- In this session, we'll:
 - Explore the challenges from which conflicts arise
 - Talk about rules of conduct
 - Discuss the role of the presiding officer
 - Consider some physical facility/space issues
 - Explore how "public comment" periods turn dysfunctional
 - Mention some legal tools and resources
 - Go through some scenarios
- YOU are the experts, so your participation throughout the session is welcomed and desired!

The contents of this presentation reflect the view of the presenter, not of CML.



What types of challenging human dynamics do we deal with?

- One-time complaints
- Serial complaints
- People who believe they have a right to something that is being denied them
- General distrust, divisions, feuds, vendettas
- "Watchdogs"
- One-time public controversies
- Others?

The contents of this presentation reflect the view of the presenter, not of CML.



What creates challenging situations at meetings?

- Political disagreements, personal disagreements
- Sense of entitlement or sense that rights are being denied
- Belief that "City Hall" has done them wrong
- Belief that City/Town is hiding something
- Belief that City/Town is corrupt, not transparent, not business-friendly, too cozy with certain interests, not citizen-friendly, etc.
- They may be specifically looking for a "free speech" fight
- Others?



What kinds of behavioral challenges do we encounter at public meetings?

- Personal attacks against elected officials or staff
- Yelling, cursing
- Gestures, costumes, masks, disrobing
- Messages on t-shirts, hats, etc.
- Speaking at inappropriate points on the agenda
- Speaking for longer than the time limit
- You're being "baited" during public comment
- Going seriously "off topic," being highly repetitious or redundant
- Meetings are regularly lasting until 1 a.m. and "public comment" is consuming huge portions of each meeting
- What else?



Groundwork: Have Rules in Place

- Rules of procedure/conduct will help you lay the groundwork for orderly public meetings
- Rules should address matters such as:
 - Public comment period(s) – placement on agenda, availability/non-availability at regular/special meetings, workshops, etc.
 - How to seek time to speak during public comment (e.g., sign-in sheet or sign-up card)
 - How to be recognized (called on by the presiding officer, come to the podium)
 - Time limits (on individual speakers and/or on total time allotted)
 - If you have them, you must be consistent in their use!
 - Prohibition on disruptions
 - Recess or adjournment for disruptions
 - Enforcement



“It’s the people’s government – let them talk for three minutes. I don’t care if it’s good, bad or indifferent. I don’t care how silly or hurtful it is. It’s our job to take it.”

-- Alderman Gregory Moisin, Waukegan City Council (Chicago Tribune, Jan. 7, 2016)



Rules

- It’s wise to have your rules reviewed periodically by your city/town attorney (unless you’d rather have them reviewed by the ACLU)
- Don’t just “borrow” from other jurisdictions...you may be “borrowing” constitutional problems!
 - Example: “No person shall make any personal, impertinent, profane, insolent, slanderous remarks.”
 - Example: “No City employee shall be permitted to speak during public comment.”
 - Example: “No person shall be permitted to speak on the topic of any litigation that the person has pending against the City.”
 - Example: “No person shall wear a mask or other facial cover, or attire containing profane or indecent messages, during Council meetings.”
 - Example: “No person shall address a single member of the Council during public comment, but rather shall address only the Council as a whole.”
 - Example: “No person shall make any complaints about or charges against any City staff members during public comment.”
- Communicate your rules! Most people don’t want to violate the rules, but may not know what they are.
 - Great example: <https://bouldercolorado.gov/city-council/speaking-at-council-meetings>



Rules

- When establishing or revising rules, consider what “culture” is in place now, and what you’re seeking to change
 - Your community may be accustomed to and/or prefer meetings where public participation is less regimented, or where there’s more public comment rather than less
 - Citizens may be accustomed to having an opportunity to speak on each agenda item, at workshops, and/or from their seats
- Rapid or radical changes may create culture shock and not sit well with the public
- Changes that seem to be aimed at suppressing or limiting one particular person or faction may not sit well, either
- If you’re trying to move from chaos to order, accept the possibility that change will need to be gradual and incremental, and accompanied by a process of public education/acceptance



“While the City Council has a right to keep its meetings on topic and moving forward, it cannot sacrifice political speech to a formula of civility.”

-- Dowd v. City of Los Angeles



The Presiding Officer

- Governing body presiding officer (Mayor) and commission chairpersons are crucial in maintaining order
- A culture of civility flows from the top down – if members practice incivility towards one another or towards staff/citizens, they can expect incivility from citizens in return
- Practice/enforce what you preach in terms of repetition, meandering off topic, filibustering, and other things you would find undesirable in public comments



The Presiding Officer

- Maintain a degree of formality at meetings – use titles, require that speakers come to podium to be recognized, etc.
- “Disarm” a tense situation. **Don’t** match tone for tone. “Out-shouting” doesn’t work.
 - If a response is necessary, lower your tone to below the speaker’s.
 - De-escalate, don’t escalate!
- Public speaking doesn’t come easily for everyone; what may appear to be rudeness or defensiveness may actually be nervousness. Help the speaker feel comfortable.
- Use non-judgmental language to get the discussion back on track
 - Instead of “Your remarks are irrelevant,” try “Quick reminder that _____ is the topic under discussion; please try to keep your remarks to this topic.”
- Have a gavel handy, and don’t hesitate to use it when necessary
- What other suggestions do you have for maintaining/restoring order?



“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 Los Angeles



How to Turn Public Comment Period Dysfunctional in One Easy Step

- Are “public comment” periods turning into “public inquisition” periods or “public argument” periods?
- What are the dynamics that are allowing this to happen?
 - “I feel I must respond to what you just said.”
 - “I’d like to try to answer that question.”



Public Comment Period Dysfunction

- DON'T be baited into responding inappropriately when someone says something inflammatory
- You always have the last word (albeit maybe not immediately): you're the deciders!
 - You don't need to engage in argument, stop the offending remarks, or try to have the last word during “public comment.”
- Have empathy, if possible! Don't demonize the speaker, because his/her reaction will be to demonize you.



Public Comment Period Dysfunction

- If you forget that you're the decider, things may escalate!
- Or you may be responding inaccurately and/or without adequate information
- Or you may be stepping into matters that staff is or should be handling!
- Or you may be setting up a community expectation of an instantaneous response to every question!



Public Comment Period Dysfunction

- Treat public comment as a primarily a one-way opportunity for the citizen to provide input TO you
- Be prepared to respond, if at all, in a way that doesn't put you on the spot with an immediate (and possibly inaccurate or inappropriate) substantive response
 - "I see that our City Manager is taking notes on your question. I trust she will get back to you just as soon as she's had a chance to research the issue...is that correct, Ms. Manager? (Manager nods yes). Thank you."



"We allow people to curse at the council. We allow them to wear dollhouses strapped to their heads. We aren't that tight on it. Yet we still have a constant battle over what is allowed."

-- Paul Koretz, Los Angeles City Councilmember
(LA Times, February 23, 2014)



Public Comment Period Dysfunction

“In the future, everyone will be famous for 15 minutes.” ~Andy Warhol

“In Council meetings, everyone gets to speak his or her mind for the allotted number of minutes.” ~Tami Tanoue

- Don't try to suppress the content of citizen speech! It's not just unlawful, it's futile! People do not take well to being suppressed.
- Establish and communicate shared norms for meetings, e.g., "We appreciate everyone's viewpoints, but personal attacks are unproductive and unhelpful. I think we might understand your perspective better if you focus on the issues, and leave aside the personal attacks."
- But if such a "teaching" approach doesn't work, grit your teeth for the allotted number of minutes.

The contents of this presentation reflect the view of the presenter, not of CML.



Public Comment Period Dysfunction

- You can deal with actual meeting disruptions. But YOUR disruptive response to someone's objectionable speech is NOT a disruption you can charge to the speaker.
- Example: Citizen throws 32 gallons of trash on the floor during public comment to emphasize the "littering" problem in the community. Disruption?
- Example: Citizen says, "You'll be sorry you cut me off after 5 minutes. Next time I'll bring my gun and use the Second Amendment to enforce my First Amendment rights." Threat?
- Example: During the pledge of allegiance, a citizen in the audience does the "Heil Hitler" salute. The mayor doesn't even notice, and goes on to the next agenda item. But one councilmember begins objecting loudly and insisting the citizen be ejected. Who's the disrupter here?

The contents of this presentation reflect the view of the presenter, not of CML.



Physical Facilities Considerations

- Make sure you have a podium for speakers
 - Gives them a place to speak from that isn't their seats
- For public hearings, give each side a "home," with the podium being a "neutral zone"
- Consider a "buffer" zone in front of the dais, where there's no public seating
 - Might put staff in the "buffer" zone
- Consider public seating that's "ganged" or interlocked to control seating locations, maintain access routes, etc.

The contents of this presentation reflect the view of the presenter, not of CML.



Physical Facilities

- For high profile or controversial agenda items, take special precautions
 - Have overflow area with closed circuit TV, or schedule the use of a larger venue
 - Arrange to have officers present and stationed at appropriate locations
 - Uniformed, plainclothes, or both?
 - Presiding officer or members should be prepared to ask for recess if emotional tenor of meeting starts to get out of hand



Physical Facilities

- Consider your "retreat" options for when you have to recess a meeting
- Have a "retreat" path that does not require you to go through the audience – walking through an angry audience is a lousy option!
- Also consider "retreat" options for potentially violent situations – how can you make a quick exit?
- Security audits available for CIRSA members



Legal tools

- For actual disruptions, explore whether criminal charges could be applicable – some pertinent statutes include:
 - CRS 18-8-102, Obstructing government operations
 - CRS 18-8-306, Attempt to influence public servant
 - CRS 18-9-108, Disrupting lawful assembly
 - CRS 18-9-110, Trespass or interference in public building, hindrance of legislative body or executive proceedings
- Also civil protection orders – CRS 13-14-101



Legal tools

- BUT...scrutinize intent, motivation before using legal tools
 - Not even a hint of retaliation!
 - Concurring opinion in 2007 10th Cir. decision (Shero v. City of Grove) noted that consternation and embarrassment of public officials, who filed a declaratory judgment action against a vocal citizen, could have been indication of a governmental lawsuit brought for retaliatory reasons
- Look for ways short of legal processes to resolve issues if possible



- “The city that silences a critic will injure itself as much as it injures the critic, for the gadfly’s task is to stir into life the massive beast of the city, to ‘rouse each and every one of you, to persuade and reproach you all day long.’” Dowd v. City of Los Angeles (quoting Plato)



Other resources

- CIRSA Loss Control Department: Assists members with building security issues
- John Nicoletti, Nicoletti-Flater & Associates, is a national authority on workplace violence, and is located in Colorado
- Keep in mind that this presentation deals with “difficult” situations, not those that have the potential for violence
 - Violence and threats are on an entirely different scale of “difficulty,” and may require other approaches



Conclusion

- Dealing with difficult situations comes with the municipal territory
- Have rules and processes in place that will facilitate citizens' right and ability to give and get information without unfairly monopolizing your time and resources
- Fair and respectful treatment at all times
- Do not demonize someone because he or she is disagreeable, or has a disagreeable message
- Commitment to transparency
- Take a "teaching and educating" approach
- Respond to disruptive conduct, not to disagreeable statements
- Look for ways to de-escalate, not escalate, a volatile situation



Scenarios

- A citizen walks into a council meeting. He's wearing a baseball cap that profanely expresses his opposition to law enforcement. Do you insist that he either remove his cap or leave the council chambers?



Scenarios

- A citizen signs up for public comment. He begins speaking calmly about a lawsuit he's pursuing against the Town. Do you shut him down on the basis that he cannot talk about his lawsuit against the Town during public comment?



Scenarios

- In the middle of your council meeting, 50 people march in. They stand in front of the dais holding up signs and chanting loudly: "What do we want? Justice! When do we want it? Now!" What do you do?



Scenarios

- A citizen speaks during public comment. She believes that the police department, and particularly the Chief, are corrupt. She accuses him of fraud, destroying evidence in the evidence room, and tolerating perjury by police officers. You are outraged and believe this is slander. What do you do?



Scenarios

- There's a public hearing on funding options for an upcoming holiday parade in Council District 7. A citizen has signed up to speak. He gets up and says, "Councilman Smith is an effing idiot." You tell him he's off topic. The citizen says, "I am on topic. I don't think you should vote to fund a parade in this effing idiot's district." Do you shut him down for being off topic?



Scenarios

- A citizen shows up at a council meeting wearing a white KKK-style hood on his head. He's told to remove it, and he explains he's protesting racism. He's told to either remove it or be ejected. He's ejected. How much is this case worth?



Speaker Bio

- Tami A. Tanoue
- In-house General Counsel/Deputy Executive Director for CIRSA
 - Previously in private practice with the firm of Griffiths, Tanoue, Light, Harrington & Dawes, serving CIRSA as its contract General Counsel for 12 years, and serving as City or Town Attorney for several Colorado municipalities.
 - Previously Staff Attorney for the Colorado Municipal League, representing the collective interests of Colorado municipalities.
 - Regular speaker on local government liability topics; author of several publications on liability issues.

Note: The information in this presentation is provided solely as a training resource, and is not a substitute for obtaining the advice of your City/Town Attorney on any legal question.



About CIRSA

- Colorado Intergovernmental Risk Sharing Agency
- Public entity self-insurance pool for property, liability, and workers' compensation coverages
 - Formed by in 1982 by 18 municipalities pursuant to CML study committee recommendations
 - Not an insurance company, but an entity created by intergovernmental agreement of our members
- Total membership today stands at 267 member municipalities and affiliated legal entities
- Out of 271 incorporated municipalities in Colorado:
 - 83% are members of our PC pool
 - 45% are members of our WC pool


