

# THE RIGHT TO BE OBNOXIOUS



LEGAL AFFAIRS

KEEP THE PEACE AS THE PUBLIC SPEAKS ITS PIECE.

**DO THE FIRST AMENDMENT** and the Open Public Meetings Act (OPMA) protect obnoxious people? The short answer is that they do protect obnoxious people, but not *really* obnoxious people. If you're an appointed or elected city official, obnoxious people are free to call you "short-sighted" and "in over your head" at city council meetings. They can't, however, make disparaging remarks about the size of your nose or your choice of wardrobe.

As you pack your council chambers to overflowing with a stellar public-engagement program, here are some guidelines for setting boundaries on how "engaged" your audience can truly be.

## The Right to Speak

A common misperception is that everyone can talk at public city meetings. Not true. People have a right to attend, but they do not have a right to speak unless they're invited to speak or there's a mandatory public hearing. Listing a "citizen comment period" on a city council agenda constitutes an invitation for citizen input, and it's how most city councils extend the opportunity to their community. If you put that item on the agenda, members of the public can speak their piece on anything related to city business.

Of course, it is a time-honored tradition in this country to

denigrate and humiliate those who volunteer to serve their communities. If you invite people to speak, they get to make fun of you. But the comments have to be related to city business; comments on your wardrobe or the size of your nose do not have to be tolerated. And if you do not want people to talk, just keep the citizen comment period off the agenda. Then, you are free to toss out members of the public who try to say something during your meeting (read on for how to do so legally). They, in turn, are free to toss you out at the next election.

## The Right to Attend

Obnoxious people have a right to attend city meetings; *really* obnoxious people do not. The OPMA gives every citizen the right to attend council meetings and any other meeting held by a "governing body," a designation that includes most decision- and policy-making bodies such as planning commissions, civil service commissions, and parks boards.

However, the OPMA recognizes that people disrupting meetings can be "removed." Disrupting a lawful assembly is not protected by the First Amendment and constitutes disorderly conduct, a crime. Police can haul people away for commit-

**Phil Olbrechts** focuses his practice on municipal and land use law. He is also a hearing examiner.

**1 GIVE VOICE** Above all else, respect the rights of citizens to express their opinion. Err on the side of allowing the public to speak.

## Talking Points

How and when to regulate citizen input

**6 STAY POSITIVE** Highly inflammatory, personal attacks do not have to be tolerated. Direct the offender to more constructive speech.

**2 BE CONSISTENT** Restrictions on speech must be uniformly applied to all citizens. Never limit the speech of a person because of who he is or what view she represents.

**3 PLAN AHEAD** Adopt procedural rules identifying inappropriate speech to facilitate uniformity in restricting speech.

**4 MOVE IT ALONG** Repetitious comments from the same person can be stopped, and reasonable time limits may be uniformly applied.

**5 MAINTAIN FOCUS** Public comments must be relevant to the applicable agenda item. Almost anything related to city business is relevant to the "citizen comment period" of a public agenda.





ting crimes, but you cannot. If that citizen making fun of your nose makes loud honking noises every time you speak and simply will not stop, call in the police. Just be very sure that the really obnoxious person is being disorderly. Hauling people away for the wrong reasons can lead to nasty lawsuits involving assault, false imprisonment, federal civil rights violations, and intentional or negligent infliction of emotional distress. It can also subject the police to pressure from their civilian superiors to take action against their own better judgment. Calling in the troops should always be a last resort.

### The Right to Hurt Your Feelings

The public has the right to assail your skills and record of accomplishments (or lack thereof) as a public servant. They can call you unqualified and short-sighted, but any specific instances they cite have to be roughly accurate; elected and appointed officials are generally fair game for any relevant opinions and nasty comments, as long as factual allegations are not made in reckless disregard of the truth (which can constitute defamation).

For example, it is legitimate for a citizen to comment that the quality of your contribution to council meetings leads

her to believe that you must be drunk. If said in a facetious manner, such a statement counts as mere opinion. However, if a citizen states that he knows you are drunk and it turns out his only evidence for this assertion is the intelligibility of your comments, that is probably defamation. If you are the target of defamatory comments, you have a cause of action for monetary damages. Keep in mind, however, that you need to prove some damage in order to reap some compensation. If nobody takes the defamer seriously because he was the one who was patently drunk, damages may be minimal.

### The Right to Be Offensive

Although citizens have a right to be offensive, they cannot be *really* offensive. There are legal limits on permissible personal attacks, described by such concepts as what courts (and Yosemite Sam) call “fighting words.” Fighting words are those that by their very utterance inflict injury or tend to incite an immediate breach of the peace; personal insults must be directed specifically at an individual and must be highly inflammatory to be excluded. In addition to having

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the ability to prohibit fighting words, a presiding officer has the discretion to regulate tone and manner to the extent necessary to conduct an orderly and fair meeting.

These limits on personal attacks are fairly subjective and have resulted in arguably inconsistent court opinions. It is best to err on the side of allowing the attacks if there is any reasonable doubt. As with most speech protected by the First Amendment, the allowable restrictions are based not upon what is said, but upon how it is said. “You, sir, are a LIAR and a scoundrel” may qualify as fighting

words, although the same sentiment could be acceptable if rephrased as, “I have trouble believing you, given the deliberate inaccuracies of your prior comments.” You are probably going to have to let someone get away with one outburst like, “You people are all idiots.” In contrast, you can stop a person who makes the same point by means of a screaming rant punctuated with obscenities and 15 offensive synonyms for “mentally disabled.”

#### Conclusion

I have liberally used the term “really” in this article to emphasize that First Amendment rights are often a matter of degree, and a subjective one at that. A little common sense and a respect for the right of citizens to express their opinions will be enough to guide you through most situations involving obnoxious people.

In short, always err on the side of letting comments come in. Forcibly remove a person only when that person is making it very difficult to hold your meeting. Following these basic guidelines will keep you out of trouble and remain consistent with the First Amendment as those obnoxious British separatists intended when they ratified it 219 years ago. ©

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