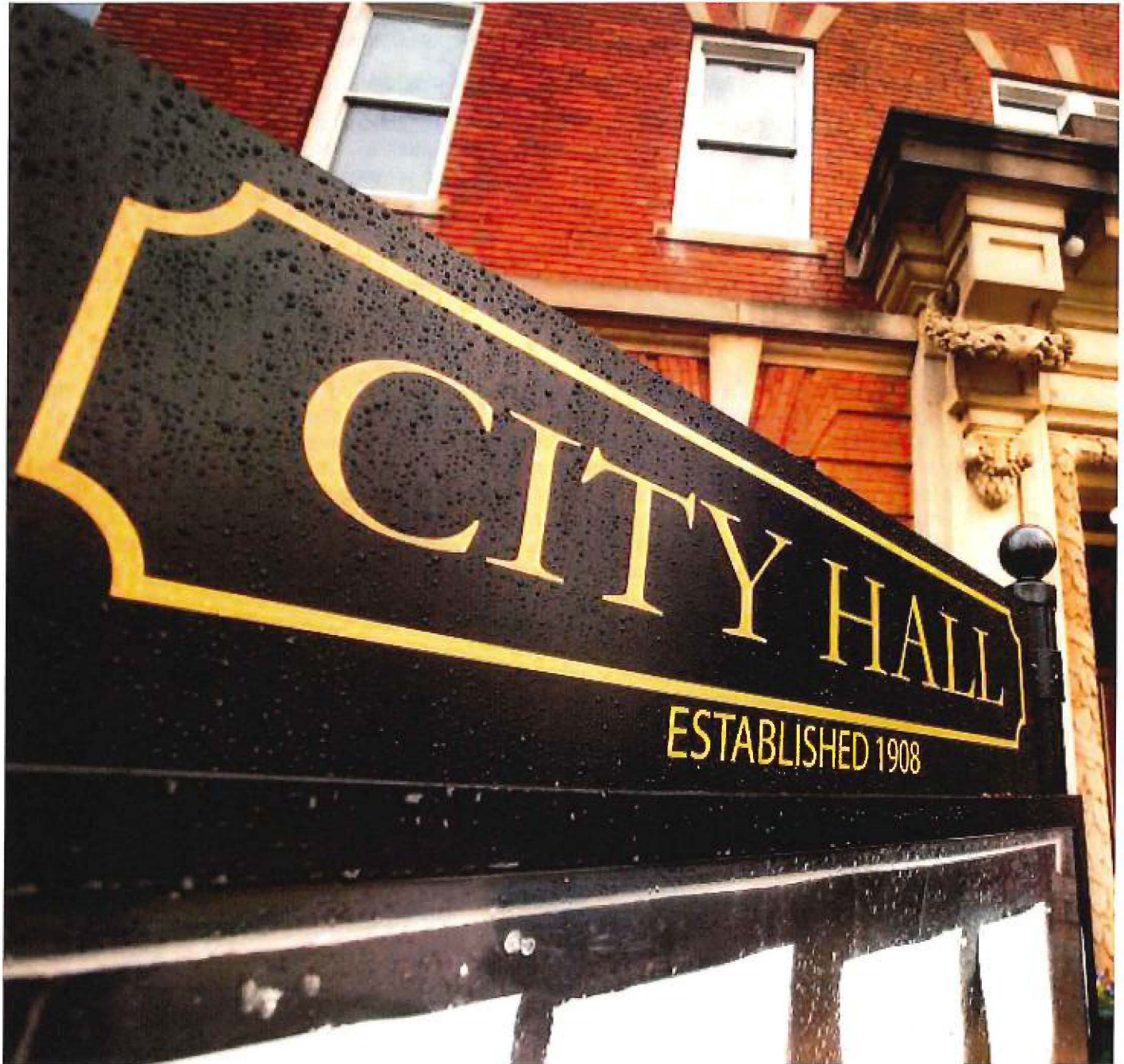


The First Amendment is Not the Last Word at Public Meetings



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City meetings progress smoothly when simple guidelines for making decisions as a group are followed, such as those outlined in the widely-referenced book Robert's Rules of Order. Here, one parliamentarian provides her input and advice on a few key issues. (Getty Images)

Managing public comments at city council meetings isn't easy. Review this framework to be prepared for

This is a guest post by Ann G. Macfarlane.

In this country today, the First Amendment to the U.S. Constitution is the foundation of our civil liberty. The freedoms that it lists are crucial to our society. When we read accounts of how these freedoms can be abridged, limited or ignored, we react with horror. And yet it is also important to acknowledge that, in the matter of free speech, the First Amendment is not the last word.

"Congress shall make no law... abridging the freedom of speech..."

These 10 words have been interpreted to allow words and actions of an extraordinary breadth and variety. In public meetings, people sometimes engage in hateful, vicious, personal and wide-ranging attacks on institutions and individuals, waving the banner of free speech. Here's how to manage these disruptions and keep the meeting on track.

A Framework for Free Speech

We would like to offer a framework for consideration of free speech at public meetings, in the hope that it will be helpful to elected officials and local governments struggling with these First Amendment issues.

1. A governing body has the right to establish rules for the conduct of its business. This principle is enshrined in state law (for example, see my home state of Washington's [RCW 35A.12.120](#)), in [Robert's Rules of Order](#), and in common parliamentary law as affirmed by the courts.
2. We recommend that every council, commission, or other public body establish its own rules of procedure. From our perspective, it makes sense to adopt Robert's Rules of Order, and then add your own special additional rules that meet the requirements of your particular situation.
3. Including a time limit on remarks is essential if a body is to conduct its business effectively.
4. A governing body may prohibit offensive speech, personal attacks, insult, etc. by its own members.
5. A member who breaks this rule may be reprimanded, censured, or asked to leave the meeting. Such punishment can be inflicted only by the body itself, not by the chair acting alone. Including such consequences in the rules of procedure, though it may not seem necessary when you adopt them, can prove very helpful if your situation changes.
6. Know what your state law says about public input. In my home state of Washington, for example, the public has the right to attend meetings, but does not have the right under the state constitution or by statute to speak at them. However, most public bodies have created this right by consistently giving the public an opportunity to speak.
7. In its rules, the body may authorize the chair to make a brief response to a speaker. The chair may state that the body will take the views into consideration during its discussion and may offer to provide information or a response later. (Of course, if you say this, be sure to follow up!)
8. However, the right to speak and ask questions does not, in and of itself, include the right to an answer. It is important for the chair not to get involved in a back-and-forth exchange with members of the public. We all have a natural impulse to defend ourselves when attacked, but remaining calm and moving on the next item of business may be the most prudent and appropriate response. This also prevents the unfortunate situation wherein the chair makes statements that are then interpreted as the position of the whole body when perhaps they have not been adopted by the body, leading to further wrangling and recrimination.
9. In general, in creating its rules, a council may impose restrictions pertaining to the way in which public comment is offered. It is fine to impose time limits, or to require that remarks be germane (relevant) to the subject at hand. In some states the body may confine public comment to specified topics.

Also important:

- While the body may request that speakers refrain from profanity, personal attacks, and so on, caution should be taken before requiring the removal of an individual whose speech is not creating an actual disruption.
- It is important to distinguish between speech and disruption. In Washington State, if members of the public who are present actually disrupt the meeting, or physical violence is threatened, they can be ordered to leave, the meeting room may be cleared, or the body itself can adjourn the meeting and reconvene in a different place, without the presence of the public but with the presence of the media ([RCW 42.30.050](#).) If you are confronted with actions that seem questionable, your attorney can provide more details of how the courts define “disruption.”

Please note: it is important to distinguish between legal concerns and parliamentary procedure. I am not an attorney and this article does not constitute legal advice. These thoughts are offered from the point of view of parliamentary procedure, which is a part of the common law with its own special history and perspective. Taking the parliamentary view into consideration, you will want to be guided by your attorney.

Honor the First Amendment, Establish Rules, Be Prepared to Act

Angry emotions and disruptive actions can have the effect of hijacking a meeting – and sometimes that’s what protesters at public meetings want. It means, though, that those same protesters are stealing from the public. They are preventing our officials from doing the work that they were elected or appointed to do. We encourage you to be proactive and definite. Honor the First Amendment, establish rules that will protect your group to the best of your legal ability, and be prepared to act when disruption threatens. To do otherwise is to run the risk of wasting your time and the public’s resources.

Have you had to deal with disruptive members of your governing body, or of the public? We invite you to share your experiences.

About the author: Ann G. Macfarlane is a professional parliamentarian who offers fresh insights into Robert’s Rules of Order at [JurassicParliament.com](#). Follow Ann on Twitter [@AnnGMacfarlane](#).