Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: July 16, 2018

TO: Honorable Members of the City Council

FROM: City Attorney

SUBJECT: Public Comment

During non-agenda public comment at the City Council Meeting of July 10, 2018, three speakers presented portions of a single video on hang-gliding. After the speakers concluded, Councilmember Zapf asked whether the Council must allow the showing of this video during public comment. In her opinion, the video was commercial and did not concern official City business. This memorandum is intended to provide a brief and general response to that inquiry.

As we explained in our memorandum of December 2, 2014, the Ralph M. Brown Act (Cal. Gov't Code §§ 54950–54963) confers upon the public the opportunity to comment on: (i) items on the agenda; and (ii) any item not on the agenda that is within the subject matter jurisdiction of the body, commonly referred to as "non-agenda public comment." City Att'y MOL No. 2014-16 (Dec. 2, 2014). It states:

> (a) Every agenda for regular meetings *shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public*, before or during the legislative body's consideration of the item, that is *within the subject matter jurisdiction of the legislative body....*

Cal. Gov't Code § 54954.3(a) (emphasis added.)

Legislative bodies have wide discretion to adopt rules governing the conduct of their meetings so long as such discretion is exercised reasonably and not in an arbitrary or capricious manner. City Att'y MOL No. 2014-16 (Dec. 2, 2014), referencing *Nevens v. City of Chino*, 233 Cal. App. 2d 775, 778 (1965). "So long as the body acts fairly with respect to the interest of the public and competing factions, it has great discretion in regulating the time and manner, as distinguished from the content, of testimony by interested members of the public." *Id.*, citing from The Brown Act: Open Meetings for Local Legislative Bodies, at 19. (California Attorney General, 2003).

Since the City of San Diego owns and leases the Torrey Pines Gliderport to a private lessee, we would likely run afoul of the Brown Act if we were to prohibit the speaker from discussing gliderports, or showing a video on this topic. Further, the Rules of the Council, which are codified in the San Diego Municipal Code, do not distinguish between commercial and non-commercial speech. Rather, Rule 2.6.1 of the Rules of Council broadly states:

> Every agenda for a regular Council meeting shall provide a period on the agenda for members of the public to address the Council *on items of interest to the public that are not on the agenda but are within the jurisdiction of the Council.* Non- Agenda Public Comment shall be subject to the exercise of the Council President's discretion for a given agenda.
>
> (Emphasis added).

The Council may wish to explore amending the Rules of Council to define and exclude commercial speech.

In addition, we have noticed an increased use of profanity by this speaker during Non-Agenda Public Comment. The Ninth Circuit previously upheld a City of Norwalk ordinance that authorized the city council to remove individuals who uttered "personal, impertinent, slanderous or profane" remarks if the remarks "disrupted, disturbed, or otherwise impeded" the conduct of the meetings. *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990). To this end, the City Council has chosen to regulate the time and manner of public testimony by adopting Rule 2.13 of the Rules of Council, which states:

> Notwithstanding any other provision of law, no person shall engage in any conduct that disrupts or impedes the conduct of a Council meeting, whether by loud, threatening, or obscene conduct, or otherwise. Any person who engages in such conduct that impedes the orderly conduct of any Council meeting shall, at the discretion of the Council President, be barred from further audience before the Council during that meeting. Any person having been ruled out of order by the Council President shall immediately conform to the orders of the Council President. Any person who refuses when ordered to conform to the rules of conduct may be removed from the place of the Council meeting by order of the Council President.

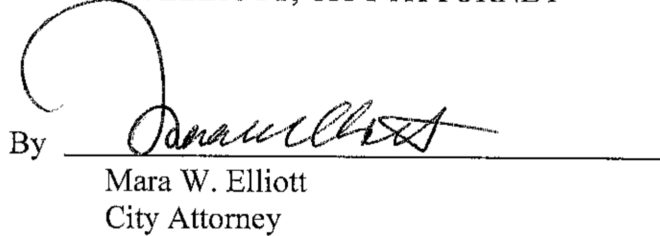
Accordingly, the Council President, who is charged with chairing the Council meetings and enforcing the Rules of Council, may guide and monitor public comment. Rule 2.6.1 of the Rules of Council. The Council President may wish to amend her script to provide the public with clearer expectations of appropriate content and conduct. She could, for example, explain that the public must direct their commentary to items within the Council's subject matter jurisdiction, and warn that she will interrupt the speaker if he or she goes astray.

Similarly, the Council President can remind the audience before public comment is taken of their obligation to abide by Rule 2.13, which requires speakers to refrain from disrupting Council meetings by engaging in loud, threatening, or obscene conduct. This is an area where further legal advice is warranted before application to ensure that the Council President's commentary and instructions are not vulnerable to a legal claim based on Equal Protection, the First

Amendment, or otherwise. Attached is helpful guidance from a League of California Cities presentation by attorney Randy Riddle at the 2015 Mayors and Council Members Executive Forum. See, in particular, pages 6 through 11.

This Office is available to further assist as needed.

MARA W. ELLIOTT, CITY ATTORNEY



By ______________________
Mara W. Elliott
City Attorney

MWE:vj
Doc. No.: 1790904
Attachment
cc: Kris Michell, Chief Operating Officer
Andrea Tevlin, Independent Budget Analyst

MS-2020-29

ATTACHMENT

Renne Sloan Holtzman Sakai LLP
Public Law Group®

Dealing With Disruptions at Public Meetings

Legal and Practical Considerations

League of California Cities

2015 Mayors and Council Members Executive Forum

Randy Riddle

Renne Sloan Holtzman Sakai LLP

Introduction

The Brown Act, as well as court decisions applying broader constitutional principles, recognizes the general right of the public to attend and, to some extent participate in, city council meetings. Those meetings frequently involve controversial, divisive and highly charged issues that can result in disruptions by members of the public and, at times, by members of the legislative body itself. This paper provides an overview of the legal principles that come into play when dealing with such disruptions, and practical considerations for resolving disruptions at public meetings.

The Legal Framework

A local legislative body seeking to address a disruption in its meetings must do so consistent with governing law, including the Brown Act, other state statutory provisions, and First Amendment considerations developed by federal and state courts. A city council seeking to prevent or deal with disruptions must do so with these legal considerations in mind, and in close consultation with its city attorney and city manager.

The Brown Act

The primary body of law governing the conduct of meetings of city councils and other local legislative bodies in California is the Brown Act.[1] This discussion focuses on those provisions of the Brown Act that address participation by members in meetings of legislative bodies, and the authority of those bodies to address behavior that disrupts the ability of the body to conduct the public's business. For a more comprehensive guide to the Brown Act, refer to *Open & Public IV: A Guide to the Ralph M. Brown Act*, published by the League of California Cities.[2]

The Brown Act seeks to strike a balance between the right of the public to participate in meetings of their legislative bodies with the need for those bodies to conduct the public's business effectively and productively. Of course, the extent to which the Brown Act strikes the proper balance is a matter for debate.

The Brown Act generally requires the public's business to be conducted in open and public meetings, and that the public be provided prior notice of the matters that will be considered at the meeting.[3] The

Brown Act also recognizes the right of the public to participate in meetings by providing comment on items on the agenda, and on matters not on the agenda but within the subject matter jurisdiction of the body.[4] Moreover, individuals, as well as members of the news media, may record public meetings.[5]

The Brown Act specifically provides that a legislative body may not "prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body."[6] Federal courts, employing a First Amendment analysis, have similarly invalidated rules aimed at shielding public employees and officials from public criticism at meetings.[7]

The Brown Act authorizes legislative bodies to adopt reasonable regulations on public participation. This authority includes adopting regulations on public testimony.[8] Such regulations must be enforced fairly and without regard to the viewpoint of the speaker. Similarly, the body may regulate the recording or broadcast of the meeting upon making a finding that the noise, illumination, or obstruction of view from the recording would constitute a persistent disruption of the proceedings.[9]

Significantly, the Brown Act also expressly authorizes the legislative body to remove from a meeting those persons who willfully interrupt the proceedings.[10] If order still cannot be restored, the legislative body may order that the room be cleared. The legislative body must allow members of the news media who have not participated in the disturbance to remain in the meeting room and observe the meeting. The legislative body may establish a process to permit individuals not responsible for the disturbance to reenter the meeting room.[11]

Other Statutory Provisions

Independently of the Brown Act, California Penal Code section 403 makes it a misdemeanor to willfully disturb or break up a lawful assembly or meeting unless the person has legal authority to do so. *McMahon v. Albany Unified School Dist.*[12] discusses the application of this statute.

The plaintiff dumped bags of garbage on the floor during a school board meeting. He was arrested for violating section 403, and sued for unlawful arrest.

The court concluded that the plaintiff's arrest was proper because he initially had been warned not to dump the trash, and the body was unable to proceed with the meeting because of plaintiff's conduct. As the court explained, unless the plaintiff was arrested, "[e]ither the meeting would have been further delayed at some point while McMahon picked up the garbage or other speakers would have had to stand near the trash in order to address the board and audience members would have been forced to peer over a mound of garbage in order to watch a public body perform its duty."[13] Accordingly, the court concluded, the trash dumping did not merely "disturb the sensibilities" of the board members. Rather, it actually impaired the ability of the body to effectively conduct its meeting.

Finally, California Government Code § 36813 – which is not part of the Brown Act – authorizes a city council to address disruptions by members of the council. That provision states that a city council "may punish a member or other person for disorderly behavior at a meeting." In exercising this authority, the council must act within constitutional constraints.[14]

First Amendment Principles Governing Legislative Body Meetings

The ability of a city council to address disruptions of its meetings within the constraints of the law would be difficult enough if the governing law consisted solely of these state code provisions. Courts, however, have concluded that a city council meeting is a <u>limited</u> public forum for purposes of First Amendment analysis, adding additional complexity to this area.[15]

As the Ninth Circuit has explained, "[c]itizens have an enormous first amendment interest in directing speech about public issues to those who govern their city."[16] Accordingly, the provisions of the Brown Act and Penal Code section 403 authorizing the legislative body to address disruptions must be implemented consistent with First Amendment principles.

In *White v. City of Norwalk,* the Ninth Circuit Court upheld a city ordinance that authorized the city council to order removed individuals who uttered "personal, impertinent, slanderous or profane" remarks if the remarks "disrupted, disturbed, or otherwise impeded" the conduct of the meetings. The court explained that the presiding officer should not rule speech out of order "simply because he disagrees with it, or because it employs words he does not like."[17] The court explained, however, that under the challenged ordinance, "[s]peakers are subject to restriction only when their speech 'disrupts,

disturbs or otherwise impedes the orderly conduct of the Council meeting.' So limited, we cannot say that the ordinance on its face is substantially and fatally overbroad." (*Id.*) More specifically, the court explained:

> A speaker may disrupt a Council meeting by speaking too long, by being unduly repetitious, or by extended discussion of irrelevancies. The meeting is disrupted because the Council is prevented from accomplishing its business in a reasonably efficient manner. Indeed, such conduct may interfere with the rights of other speakers.
>
> Of course the point at which speech becomes unduly repetitious or largely irrelevant is not mathematically determinable. The role of a moderator involves a great deal of discretion. Undoubtedly, abuses can occur, as when a moderator rules speech out of order simply because he disagrees with it, or because it employs words he does not like. But no such abuses are written into Norwalk's ordinance, as the City and we interpret it. Speakers are subject to restriction only when their speech 'disrupts, disturbs or otherwise impedes the orderly conduct of the Council meeting.' So limited, we cannot say that the ordinance on its face is substantially and fatally overbroad.[18]

In *Norse v. City of Santa Cruz*,[19] the Ninth Circuit explained that city councils may "regulate not only the time, place, and manner of speech in a limited public forum, but also the content of speech – as long as content-based regulations are viewpoint neutral and enforced that way." Indeed, the city council may "close an open meeting by declaring that the public has no First Amendment right whatsoever once the public comment period has closed."[20]

The *Norse* court emphasized, however, that city councils may not "extinguish all First Amendment rights" at a public meeting.[21] For example, a member of the public may not be ordered removed from the meeting merely for making an inflammatory gesture, such as a "Nazi salute," unless this conduct was itself *actually* disruptive.[22] The court in *Norse* emphasized that city councils are not free to define "disruption" in whatever manner they choose. Rather, the court emphasized that "[a]ctual disruption means actual disruption. It does not mean constructive disruption, technical disruption, virtual disruption, *nunc pro tunc*[23] disruption, or imaginary disruption."

The Ninth Circuit recently emphasized the requirement that both the city rules of order regulating conduct at public meetings – and the actual application of those rules – be limited to conduct that is *actually* disruptive, at least to the extent that the person is to be removed from the meeting for the conduct.[24] Because the challenged ordinance regulating "insolent" conduct during a meeting could not be narrowly construed to apply only when the "insolent" conduct actually disrupted the meeting, the court invalidated that provision of the ordinance.[25]

In applying rules prohibiting disruptions of meetings, the requirement of viewpoint neutrality is critically important. Courts have invalidated orders that individuals be removed from meetings where the courts concluded that the actions were based on the viewpoints of the speakers, or speech offended the sensibilities of the public officials.[26]

California courts have also applied First Amendment principles to limit the circumstances in which a body may order a member of the public removed from a meeting for behavior the body deems to be disruptive. *In re Kay*[27] involved the scope of Penal Code section 403. The court recognized that the orderly conduct of public meetings protects the right to free speech because "[f]reedom of everyone to talk at once can destroy the right of anyone effectively to talk at all."[28] The court concluded, however, that Penal Code §403 does not "grant to the police a 'roving commission' to enforce Robert's Rules of Order." (*Id.*)

Accordingly, the court concluded that section 403 must be limited to those situations where a member of the public substantially impairs the conduct of the 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 man should have known."[29] The court expressly cautioned that, "[i]f any audience participation is permitted the rules regulating who may speak cannot be used to silence a participant merely because his views happen to be unpopular with the audience or with the government sponsors of the meeting."[30]

Again, a common theme among all of these cases is that city councils, in seeking to address disruptions, must do so in a consistent, viewpoint neutral manner.

General Considerations for Addressing Disruptive Conduct

With these legal principles in mind, and before discussing specific disruptive situations, we will provide some general thoughts on steps that can be taken to prevent or reduce the degree of disruption at public meetings, based on our experience.

1. **Adopt Rules of Order That Clarify the Types of Behavior Deemed Disruptive.** Having specific rules that identify the types of conduct deemed disruptive, rather than having this issue addressed through ad hoc rulings, is a critical first step. In adopting your rules – with the advice of your city attorney – look to rules that have been upheld by courts, such as those challenged in *White v. City of Norwalk.* Consistent with *Norwalk* and *Norse*, those rules should make clear that they prohibit only behavior that *actually* disrupts the meeting, and that they will applied in a viewpoint neutral manner.

2. **If a Highly Charged Issue Is on the Agenda, Encourage the Presiding Officer to Explain These Rules to the Public, and How They Will Be Applied.** We think that this practice serves multiple purposes. First, it reminds the presiding officer and other council members of how disruptions must be handled, and that the rules must be applied in an even-handed manner. Second, it lets the audience know at the outset that the city council has adopted rules prohibiting disruptions, and what the consequences will be if someone chooses to engage in conduct that actually disrupts the meeting. Third, should someone be removed from the meeting, and later challenge the removal in court, it will assist in the defense of the action.

3. **Meet With Your City Attorney, City Manager, and If Appropriate, a Police Department Representative, Before the Meeting to Ensure That Everyone Is on the Same Page About How Disruptions Will Be Handled.** In many cities, a police officer serves as the sergeant-at-arms responsible for carrying out the directives of the presiding officer, or city council. In addition, to the extent that a member of the audience engages in conduct that violates Penal Code section 403, police officers may be involved in arresting an individual for violating that section.

We have found that it is very helpful to meet with the city attorney, city manager and police chief or designee, to ensure that everyone has the same understanding and expectations about the circumstances

and process that would lead to a member of the audience being removed, and perhaps cited for violating Penal Code section 403. For example, everyone should be on the same page about the need for the challenged conduct to be actually disruptive, that actions to address such conduct be done even-handedly without reference to the viewpoint of the member of the public, and the interaction between the presiding officer and police officer or other sergeant-at-arms.

4. **Provide at Least One Warning Before Ordering a Disruptive Individual from the Meeting Room.** Given the rights of the public under the Brown Act and First Amendment, it is our view that except in the most extreme cases, the presiding officer should, if at all possible, clearly warn the individual that his or her conduct is actually disrupting the meeting, and request that it cease, before taking action to have the individual removed from the meeting room.

5. **Organize the Agenda in the Manner Most Likely to Ensure That The Critical Business of the Council Can Be Completed Even If Disruptions Are Anticipated With Respect to a Particular Agenda Item.** This is a practical, rather than legal consideration, and must be assessed on a case-by-case basis. If there are important, but not controversial, matters on the same agenda as a highly charged item, it may be best to have the council address those matters early in the meeting, before tensions rise, nerves fray, and the decision-making process becomes impaired.

6. **Remain Calm and Focused, and Provide an Example Through Your Own Demeanor.** Again, this is a practical consideration, but an important one. It has been our experience that the public feeds off of rancor and discord among members of the council. There are certainly limits as to what city council can do when tempers flare, but addressing the situation in a calm and assured manner may help the situation.

Dealing With Specific Types of Disruptive Conduct by Member of the Public

We cannot, of course, address every type of disruption that might occur during a public meeting. We will discuss types of disruption that we have seen arise with some frequency, offer some suggestions for addressing them, and hopefully spark further suggestions at the conference discussion of this topic.

1. **A Speaker Refuses to Leave the Microphone After His or Her Speaking Time Has Expired.** In our experience, this is one of the most common types of "disruptions" that can occur during a council

meeting. The Ninth Circuit has identified this type of conduct as one that can result in an actual disruption, and one that is within the discretion of the presiding officer to address.[31] Nonetheless, this is the quintessential example of a situation where at least one warning should be issued before any effort is made to remove the speaker for disrupting the meeting. We have found that it can be effective to provide to the city clerk – who is likely to viewed as more impartial than an elected presiding officer – the ability to turn off the microphone (if one is used) once the person has been warned that his or her speaking time has expired.

This is a situation where enforcing the rule in an even-handed manner is extremely important. If the audience senses that the presiding officer is not enforcing the time limits against speakers on one side of an issue, the ability to enforce the time limits can be undermined, and it can lead to unruly behavior by others in the audience.

2. Speakers Insist on Addressing Matters Clearly Not Relevant to the Agenda Item. This type of "disturbance" can be a difficult one to properly assess and police. It can arise in different ways.

First, a speaker may use his time to comment on something that is indisputably irrelevant to the specific agenda item. For example, in connection with an item to declare June as City Attorney Month, a speaker uses his time to talk about the need to fix potholes on Main Street.

Second, a speaker may seek to speak during general public comment about a specific item on that agenda but that the council has not yet reached, and that will have its own time set aside for public comment.

Third, a speaker may attempt to discuss a subject that is not on the agenda, nor within the subject matter jurisdiction of the city council, such as using his time to advertise for sale his used Subaru.

Again, the approach to be used depends on the extent of the problem caused by this practice. If there are thirty items on the agenda, and it becomes apparent that the individual is committed to speaking about the same clearly irrelevant subject on each of those items, then after clear warnings to the individual, ordering him or her removed may be appropriate. In more isolated cases, we believe that the more

practical solution is encourage the person to address the agenda item, and leave it at that. Apart from the fact that it is unlikely that a single isolated instance will rise to the level of an actual disruption, is likely to take more time to remedy the problem than it would be hear the person out.

3. Verbal Disruptions from the Audience

A council's consideration of a particularly controversial matter can lead to heated emotions on both sides of the issue. At times these emotions can manifest themselves in the form of outbursts from the audience, either while individuals are providing public comment, or during the council's deliberation of the issue.

Addressing this species of disruption depends on how widespread, noisy and continuous the outbursts become. If individual members of the audience causing the actual disturbance can be identified – and if warnings are not effective in quieting the outbursts – those specific individuals may be removed.

If, on the other hand, the outbursts come from a significant portion of the audience, removing individuals is unlikely to be effective, and may even exacerbate the problem with the remaining audience members. Instead, following warnings, the more practical and effective practice would be to call a brief recess. In addition to giving the crowd an opportunity to cool off, it also provides an opportunity to confer with the presiding officer, city manager and police representative about next steps in the event the nature of the outbursts constitute an actual disturbance of the meeting.

And that brings us to the "nuclear" option: ordering that the room be cleared. We have never seen that option exercised, and there are compelling reasons – legal, political and practical – for choosing not to resort to an option that could result in photos in the next day's newspaper of police officers ushering folks out of a public meeting. We believe that almost any alternative is preferable – including threatening the use of the option, or continuing the matter to later in the meeting or to some future meeting.

If the option is to be exercised, strict adherence to the statutory requirement – including allowing the press back in and determining whether others should be allowed in – should be strictly followed. You may also wish to consider allowing individuals back in one at a time to provide public comments, and

broadcasting the audio of the meeting to an area where those who have been removed can listen, assuming the availability of the necessary technology.

When It Is A Council Member Who Is Being Difficult

Council meetings are difficult enough for a city council to regulate when it is members of the public that engage in belligerent and disruptive behavior. The issues in dealing with disruptive behavior are compounded when it is a member of the city council itself who is behaving badly or disrupting the meeting by refusing to comply with the mayor's request for order, complying with the rules of order, or making *ad hominem* personal attacks or accusations involving other council members or staff.

In addition to the First Amendment rights that all citizens speaking at public meetings have, as discussed above, elected officials have the additional First Amendment protection arising from holding public office. In *Carter v. Commission on Qualifications of Judicial Appointments*,[32] the court stated that "the right to hold public office, either by election or appointment, is one of the valuable rights of citizenship." Restrictions on the First Amendment rights of elected and appointed officials is likely subject to more stringent review that those of non-elected citizens.[33]

In the case involving the refusal of the Georgia House of Representatives to seat Julian Bond because of his statements on the Vietnam draft, the US Supreme Court stated that "the manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy."[34] In *Miller v. Town of Hull*,[35] the Court of Appeals affirmed a 42 U.S.C section 1983 jury verdict, including punitive damages, against a town council that attempted to remove members of an appointed city redevelopment authority based on the authority's exercise of First Amendment rights in supporting a subsidized housing project that the town council opposed.

It follows that great caution must be exercised in determining that a council member or board member is disruptive and subject to removal from a public meeting. Absent clear behavior that is threatening to public safety or involves physical conduct that disrupts a meeting, a court is likely to find issues of fact precluding summary judgment and requiring an evidentiary showing of the constitutional basis for the exclusion.

In *Vacca v. Barletta*,[36] acting chair Barletta told Vacca, a member of the school board, that he would not continue with a "screaming debate" where Vacca was "aggressively challenging" the school

superintendent. Barletta called a recess, and shortly after the meeting resumed three police officers physically dragged the protesting Mr. Vacca from his seat, handcuffed him, and took him to the police station for the duration of the meeting. Good drama, but bad decision, as the summary judgment for Barletta was reversed by the US Court of Appeals based on disputed facts on whether Vacca's removal was content-neutral for disruption or for constitutionally protected speech. It should be noted that the case does not say that Barletta acted on the advice of the board's counsel, who perhaps was not present and didn't have the chance to counsel his client.

1. Practical Pointers
   a. Be extremely cautious in considering the removal of a council member at a public meeting, as absent compelling evidence on a tape of the meeting it will be setting the council member up to claim he/she is being targeted for First Amendment expression, is likely to aggravate rather than calm the situation in the long term, and may result in a lawsuit against the agency and mayor claiming violation of federal constitutional rights.
   b. If a meeting becomes unruly or difficult, a recess is often a good way to provide a short respite from the arguing and accusations and to provide the opportunity for council members to cool down and hopefully return as adults to the podium.
   c. When a councilmember continues to return to points already made and wants to speak multiple times and at length on the same issues, the parliamentary procedure motion to "end debate and call the question" is an effective method to move the item along.

Conclusion

The key to addressing disruptions at city council meetings is to act transparently, consistently and without regard to the viewpoint of the speaker. Adopting specific rules governing this area, and discussing their operation with the city attorney and city manager when a potentially charged issue is coming before the Council, helps to accomplish that goal.

[1] Government Code section 54950 et seq.
[2] This excellent publication is available at http://www.cacities.org/UploadedFiles/LeagueInternet/86/86f75625-b7df-4fc8-ab60-de577631ef1e.pdf. The Attorney General's 2003 guide to the Brown Act, although now somewhat out of date, is another valuable source of information about this statutory scheme. http://caag.state.ca.us/publications/2003_Main_BrownAct.pdf
[3] Government Code §§ 54953 and 54954
[4] Government Code § 54954.3. The right of members of the public to address matters not on the agenda but within the jurisdiction of the legislative body does not extend to special meetings unless the body itself grants that right through its rules of order.
[5] Government Code § 54953.5
[6] Government Code § 54954.3
[7] *Baca v. Moreno Valley Unified School Dist.*, 936 F. Supp. 719 (C.D. Cal. 1996); *Leventhal v. Vista Unified School Dist.*, 973 F. Supp. 951 (S.D. Cal. 1997).
[8] Government Code § 54953.3
[9] Government Code § 54953.5 and 54953.6
[10] Government Code § 54957.9
[11] *Id.*
[12] 104 Cal.App 4th 1275 (2002)
[13] *Id.* at 1289.
[14] See *Nevens v. City of Chino* (1965) 233 Cal.App.2d 775, 778 (in invalidating prohibition on tape recording city council meetings, court explained that rules adopted under section 36813 cannot be "too arbitrary and capricious, too restrictive and unreasonable.")
[15] *White v. City of Norwalk* (9th Cir. 1990) 900 F.2d 1421, 1425.
[16] *Id.*
[17] *Id.*
[18] *Id.*; see *Steinburg v. Chesterfield County Planning Comm'n* (4th Cir. 2008) 527 F.3d 377, 384-385) (rejecting First Amendment challenge to removal of individual for failing to address matters relevant to the subject of the meeting); *Rowe v. City of Cocoa* (11th Cir. 2004) 358 F.3d 800, 803 ("As a limited public forum, a city council meeting is not open for endless public commentary speech but instead is simply a limited platform to discuss the topic at hand"); *Eichenlaub v. Township of Indiana* (3rd Cir. 2004) 385 F.3d 274, 281 (body may remove a "repetitive and truculent" speaker in order to prevent 'badgering' and 'constant interruptions."); (*Galena v. Leone* 199 (3rd Cit. 2011) 638 F.3d 186 (member of the public who continues to interrupt meeting by making "objections" may be removed from meeting); (*Jones v. Heyman* (11th Cir. 1989) 888 F.2d 1328, 1329 (presiding officer may require that speakers adhere to the agenda); *Scroggins v. City of Topeka, Kansas*, 2 F. Supp. 2d 1362 (upholding a viewpoint neutral city council rule prohibiting personal attacks); but see *Richard v. City of Pasadena* (C.D. Cal. 1995) 889 F.Supp. 384 (invalidating rule requiring members of the city council "[t]o perform responsibilities in a manner that is efficient, courteous, responsive and impartial" on the ground that it was unconstitutionally vague and did not require that the regulated conduct be disruptive); see generally *But It's My Turn to Speak! When Can Unruly Speakers at Public Hearings Be Forced to Leave or Be Quiet*, 41 Urb.Law 579 (2009).
[19] 629 F.3d 966, 975 (9th Cir. 2010)
[20] *Id.*
[21] *Id.* at 975-976.
[22] *Id.* at 976; *Leonard v. Robinson* (6th Cir. 2007) 477 F.3d 347, 352 (single utterance of obscenity did not constitute disruption sufficient to justify individual's removal from meeting).
[23] I.e., "disruption" that is determined retroactively.

[24] *Acosta v. City of Costa Mesa* (9th Cir. 2012) 694 F.3d 960, 971-972.
[25] *Id.* The court, however, severed that provision from the ordinance to save it from complete invalidation. 694 F.3d at 977-978.
[26] *Norse*, *supra*, 629 F.3d at 976; *Monteiro v. City of Elizabeth*, 436 F.3d 397 (3rd Cir. 2006); *Musso v. Hourigan*, 836 F.2d 736, 739 (2d Cir. 1988); see *Kindt v. Santa Monica Rent Control Bd.* (9th Cir. 1995) 67 F.3d 266, 270-71 ("[L]imitations on speech at meetings must be reasonable and viewpoint neutral . . . .")
[27] 1 Cal.3d 930 (1970)
[28] *Id.* at 941.
[29] (*Id.* at 943)
[30] (*Id.* at 943, fn.10.)
[31] *White v. City of Norwalk, supra,* 900 F.2d at 1425.
[32] 14 Cal. 2d 179 (1939).
[33] *Huntley v. Public Util. Com.* (1968) 69 Cal. 2d 67.
[34] *Bond v. Floyd*, (1966) 385 U.S. 116.
[35] 878 F. 2d 523 (1989).
[36] 933 F. 2d 31