



PUBLIC COMMENT:
MAY I ADDRESS THE ELECTED OFFICIALS AT MY PUBLIC BODY?

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This brochure is meant to provide a general guide to freedom of speech at public body meetings and should not be taken as legal advice.

Citizen Advocacy Center (CAC) is an award winning, non-partisan, 501(c)(3) non-profit, free community legal organization, founded in 1994, dedicated to building democracy for the 21st Century by strengthening the public’s capacities, resources, and institutions for self-governance.

PUBLIC COMMENT: MAY I ADDRESS THE ELECTED OFFICIALS AT MY PUBLIC BODY?

Have you ever found yourself wondering, “Am I allowed to speak at a government meeting?” “When is it my chance to talk?” “Can the public body limit how long I speak or what I say?” “Is it ok for the public body to cut me off?” “What if I have something to say that isn’t popular?”

This “Tool To Use” is offered by CAC to provide background information regarding the right of an individual to speak at local government meetings as allowed under the Illinois Open Meetings Act and the First Amendment. It outlines reasonable government restrictions that a public body may implement. It also includes a sample public comment policy that evidences best practices.

BACKGROUND

Public comment provides one of the few avenues that the public has to make public statements to elected officials on matters of public concern. Prior to January 1, 2011, the Illinois Open Meetings Act (OMA) did not guarantee members of the public the right to address public bodies. Section 2.06(g) of OMA went into effect January 1, 2011 and requires that all public bodies subject to OMA provide an opportunity for members of the public to address public officials at open meetings. Under the OMA, when a majority of a quorum of public officials from a particular government body gather and discuss public business, those meetings must be convened openly, or in the public eye, unless there is a legally sufficient reason that permits the public body to meet in closed, or executive session.

The right to address public bodies at open meetings is not without limits. While the OMA is clear that the public has a right to speak during a meeting of the public body, that right is subject to *reasonable limitations* by the public body.

The law requires public bodies to publish their public comment rules. As such, many public bodies are in the process of drafting or revising their public comment rules of procedure. CAC routinely fields questions about public comment rules published in response to the “right to speak” provision of the OMA. Namely which rules are permissible, and which are not? What are reasonable limitations on the right to speak?

REASONABLE REGULATIONS

Although the OMA addresses the types of rules a public body may adopt, the general rule is that public bodies may only adopt "content-neutral" rules which are reasonable time, place, and manner restrictions necessary to further a significant government interest. Two questions come to mind: What is a significant governmental interest? And what can public bodies do to limit public comment?

Government Interest

Most time, place, and manner restrictions on public comment periods may be justified by the significant governmental interest of having efficient business meetings.

Time Restrictions

An example of time regulation is a protest in a busy city during rush hour traffic. The First Amendment protects the right to protest but the government may regulate the time period of that protest and weigh the right to protest against everyone else's right to travel roads and utilize sidewalks.

At an open government meeting, the public body will have a designated time(s) for the public to speak directly to the government body on the agenda. Members of the public should not yell out or interrupt the meeting from their seats (a possible consequence includes removal from the meeting). Rather, an individual should wait to be recognized by the meeting Chairperson and then address the public body during the specified time period. A public body has the authority to determine the time-frame during an open meeting for the public to speak. An example would be three minutes per speaker for a total public comment period of 30 minutes.

Place Restrictions

An example of a place restriction would be a protest in a bustling city where protesters are limited to certain spaces or prevented by barriers from jaywalking or crossing streets. When government restrictions on your speech are based on your physical location or based on the order of the agenda for a meeting, without regard to the content of your speech, this is called a place restriction.

In the context of an open government meeting, a government entity has the discretion as to where to place the public comment period: public comment may be near the beginning of the meeting, towards the end of the meeting, in both the beginning and end, or even multiple times throughout the public body's discussion of different agenda items.

Manner Restrictions

A classic example of a manner restriction is noise regulation. You have the right to speak at an open meeting, but you may not speak into a megaphone in making your public comment.

Public bodies may require you sign in for public comment and state your name before speaking. If you attend an open meeting, you will likely find a sign in sheet for public comment, or at the very least a copy of the agenda for the meeting with "Public Comment" listed as an item. Illinois public bodies *may not* require any speaker to state his or her physical or residential address. See *Illinois Attorney General Public Access Opinion 14-009*.

PROTECTED SPEECH

During public comment, your right to speak is protected by the First Amendment. What does this mean in practical terms? According to Constitutional law, a public body cannot limit your speech based on its content, meaning the members of the public body cannot limit what you have to say because:

- it's members do not like what you are saying;
- it's members "have already heard it"; or
- the speech is critical of government.

Federal law differentiates between the types of places in which individuals express themselves as well as the value of that expression. For example, common places for gatherings have always included parks and streets. These are considered public forums. Public forums are treated as arenas sacred to public discourse. In a public forum, the government may only impose reasonable time, place, and manner restrictions, also known as content-neutral restrictions, to further a significant government interest. Conversely, the government is prohibited from regulating the content of speech unless it can articulate a compelling government interest to do so, which is a very high standard and rarely met. National security is a prime example.

In Illinois, open meetings must set aside time for public comment. This is obligatory. The public body may not opt into or out of public comment at its discretion. The public comment period in Illinois is a type of “public forum” as described in First Amendment law; it is not like a sidewalk or a public park, but it is related in that a “designated forum” has been created. A designated forum is that which the government makes available to a class of speakers for the allowance of expressive activity. In other words, the government has specifically carved out a period of time for people in attendance to speak. Therefore the government cannot restrict the content of speech during the designated forum unless it can articulate a compelling governmental interest to restrict the content of speech. Under this standard, courts scrutinize the regulation at hand very closely and abide strictly with First Amendment principles.

Political Speech

The central feature of American democracy is an engaged public contributing to public debate. That is why political speech is special under First Amendment law and why public comments to a government body are considered political speech by nature. First Amendment law even protects people who are speaking out of hatred, although speakers need be wary of defamation and similar lawsuits. This was eloquently stated by former Supreme Court Chief Justice Rehnquist as follows:

Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and the ascertainment of truth. Thus, while such bad motive may be deemed controlling for purposes of tort liability in other areas of the law, we think the First Amendment prohibits such a result in the area of public debate about public figures.

Hustler Magazine v. Fawell, 485 U.S. 46 (1988) (internal citations omitted).

Ultimately, as put by Justice Rehnquist, comments offered in critique of the public body or in broaching unpopular subjects contribute to the public debate. This means that a public body may not pre-empt your speech by forbidding you from making “critical” or “personal” comments, or place other content-based restrictions on your comments. While speakers must guard against defamation, they may certainly offer biting critiques of elected officials.

EXAMPLES OF UNCONSTITUTIONAL RESTRICTIONS ON SPEECH

Under the auspice of maintaining civility and an environment conducive to business, the following are examples of restrictions that a government body may try to impose during public comment (when the speaker is engaged in political speech) which impact the content of speech. One way to vet whether a restriction is a neutral or content-based is to ask if the speech used during public comment violate the restriction. Below are some common types of restrictions:

Viewpoint Restrictions

A viewpoint restriction is a type of content-based restriction, but is particularly anathema to the First Amendment because it blatantly favors or disfavors one point of view over another. For example, a public body is unreasonable if it only allows for “peaceful labor picketing” or “pro-union picketing” near schools but excludes picketing related to other issues in the same places based on content. (For more on this, read the 1972 Supreme Court case *Police Dep’t of Chicago v. Mosley*, which can be found at 408 U.S. 92.) As another example, a government may not allow only proponents of an issue to speak.

As an extreme example,

- “Only people who have good things to say about this public body may speak. No one may criticize the public body.

Maintaining Decorum - “Niceness” Policies

A decorum or “niceness” policy attempts to regulate the tenor of individual speakers and how they deliver a comment, forbidding speech that is “offensive” or “disrespectful.” They are also considered vague.

Here are some other examples of “niceness” policies:

- “Comments that are abusive and harassing, and/or state personal attacks will not be permitted.”
- “Speakers will not be permitted to make condescending comments and name call any board member.”
- “Speakers shall be courteous and cannot personally disrespect any board member.”

Repetitive Comments

Each member of the public has the same First Amendment freedom to speak. First Amendment freedoms are violated when a public body doesn’t allow each person the same opportunity as others to speak during a public comment period. When a public body attempts to restrict “repetitive comments” it deprives a show of strength in numbers and speech encompasses more than the words used; it includes mannerisms and individual styles of delivery. A limited time period per speaker prevents unduly repetitive comments.

Examples:

- “The presiding officer may limit public comment by speaker(s) who have voiced the same concerns publicly at previous meetings.”
- “At the presiding officer’s discretion, public comment may be limited if it is repetitive.”

Other Chair-Based Restrictions

Content-based restrictions might apply to any subject or content. As a general rule, public comment policies may limit comment to matters pertaining to the local government, but cannot decide that only some aspects of local government can be discussed and not others.

- “Speakers may express themselves only on the topic of school curricula, and not on the school administration or school faculty and staff.”

Unfettered Discretion

Unfettered discretion describes the broad authority that is given by law, regulation, or policy that permits a governmental official to restrict speech without benefit of unequivocal standards to enforce the law. Broad discretion gives too much latitude to a government official who exercises decisions based on personal opinion rather than on unequivocal standards.

As an extreme example:

- “The Chairperson may eject any member of the public from the meeting for any reason at any time.”

BEST PRACTICES

When public bodies write the rules that govern public comment periods, they need to remain aware of the First Amendment rights of those who wish to speak during public comment. While lawful public comment policies may vary, below are CAC recommendations for best practices for a welcoming public comment policy.

Protect Political Speech

The public comment policy must comport with the First Amendment and protect political speech. It will protect the right of the speaker to lawfully speak by being content-neutral and not authorizing any public official to silence someone based on what they are saying.

Limit Total Time Period and Time Per Speaker

CAC recommends that a public body limit public comment to both a specific time frame for the entire public comment period, and per speaker. CAC recommends that a public body adopt a rule that limits the total time period available for public comment at open meetings. CAC routinely sees 30 minutes periods offered, with allowance for extra time allocated for special circumstances involving controversial subjects. This allows the public an opportunity to comment but also ensures the public body’s ability to conduct the meeting and address other agenda items.

While practices vary, a usual time allotment per speaker is 3 minutes per public comment. Best practices require that the time allotment per speaker is uniformly enforced. If a public body does not uniformly enforce the time limit to all speakers, it risks using bias through imposing content-based restrictions on speech, e.g., allowing a commenter congratulating the public body to speak longer than one criticizing the public

body. Many public bodies will have a timer that will give a warning for the final 15 seconds and then buzz at the end of the public comment time period.

Sign in requirements

A public body may elect a first-come-first-serve basis, and require sign-up, but best practices dictate that after the public comment period the Chair ask if anyone wish to make a public comment that did not have a chance to sign-in.

Notice for Public Comment

Public comment must be noticed on a public body's meeting agenda. The public body has discretion in where it places public comment on its agenda, and best practices require that ample opportunities be provided for the public to speak at multiple times on the agenda and consistently allow for public comment at the same point at each meeting. Thus, a public body might place public comment routinely at the beginning of the meeting, at the end, or throughout the meeting as different agenda items are being deliberated. A usual practice is public comment placed at the beginning of the agenda, which provides the public an opportunity to make public comment in advance of votes on action items. Additionally, best practices dictate having an opportunity for public comment prior to any executive session.

Suggested language for a public comment policy:

You may address the public body on any matter during the public forum portion of the meeting. Please sign-in at the back of the Chambers before the start of the meeting and approach a microphone once you have been recognized by the Chair. If you did not have the opportunity to sign in prior to the meeting, the Chair will ask at the end of the public forum if there are any other speakers. Please raise your hand and the Chair will recognize you.

All meetings of the Board are open to the public, and public comment is accepted for a maximum of 30 minutes at each meeting. At the beginning of your comment, please state your name. There is a three (3) minute time limit for your remarks. Please be aware that the public body is not required to respond to your remarks during the course of their meeting.

Suggested Placement of public comment within the policy:

- Prior to executive session
- Prior to beginning public body business
- Prior to action items not on a consent agenda
- Prior to adjournment of the meeting

CAC is open for the public to obtain free civic resource materials, ask questions of our community lawyers on matters of public concern, engage in civic discussion, learn about local issues, attend training workshops, and develop skills for participating in civic affairs.

Please contact us if you are interested in learning more about us, becoming a volunteer or making a tax-deductible contribution.

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relies on your support to make a difference
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VOLUNTEER!

- ADULTS WHO WANT TO IMPROVE GOVERNMENT MAY:
 - ✓ Facilitate Government Surveys
 - ✓ Research Government Practices and Ordinances
 - ✓ Monitor Government
 - ✓ Provide In-Office Assistance

- STUDENTS WHO WANT TO LEARN HOW GOVERNMENT *REALLY* WORKS MAY ENGAGE IN:
 - ✓ Community Organizing
 - ✓ Policy Analysis
 - ✓ Government Monitoring
 - ✓ Legal Research

- PRO BONO LAWYERS MAY:
 - ✓ Assist Citizen Groups in Addressing Issues of Public Concern
 - ✓ Collaborate on Litigation
 - ✓ Conduct Legal Research

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