

Resources

- ▶ Dave Church's Handbook on Municipalities
- ▶ The Sandy City "Council Policy Manual"
- ▶ Various Utah Code Provisions
- ▶ Various State and Federal Court Decisions

Speakers in Public Meetings

- ▶ General Public
- ▶ City Administration and Staff, including Council Staff
- ▶ City Council Members

“Rules of Order and Procedure”

Utah Code, Section 10-3-606(2)(a)

“[A] municipal legislative body shall:

- ▶ adopt rules of order and procedure to govern a public meeting of the legislative body; [and]
- ▶ conduct a public meeting in accordance with the rules of order and procedure.”

Utah Code, Section 10-3-606(1)

- ▶ parliamentary order and procedure
- ▶ ethical behavior; and
- ▶ civil discourse

Dave Church

- ▶ “There is no mandatory set of rules and procedure for city . . . council meetings”
- ▶ Must be “consistent with state law”

State and Federal Court Decisions

- ▶ Must also be consistent with federal (constitutional) law

Utah Code Section 10-3-606(2)(b)

- ▶ Must comply with Utah’s Open and Public Meetings Act

**OPEN MEETING DIALOGUE
FREE SPEECH**

V.

**UNPROFESSIONAL CONDUCT
DISORDERLY CONDUCT**

New York Times Co. v. Sullivan (1964)

Justice William Brennan

There is a “profound national commitment that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”



Utah Open Meetings Declared Public Policy

“It is the intent of the Legislature that [City Councils] take their actions openly and conduct their deliberations openly.” –

Dave Church

“A good public official has to have the courage to bare some skin and conduct the public’s business in the open, even if their political cellulite will show.”

State and U.S. Constitution – Freedom of Speech

- ▶ Applies to all three groups of speakers in public meetings
- ▶ Council Policy Manual

“Elected officials retain their First Amendment Rights”

Limitations

- ▶ Reasonable Time, Manner & Place Regulations

- ▶ Utah Code, Section 10-3-608

“The governing body on a two-thirds vote may expel **any person** who is disorderly during the meeting of the governing body.”

➤ Utah Code, Section 10-3-607(2)

“[F]ollowing a two-thirds vote . . . the governing body may fine or expel a member of the governing body for:

- disorderly conduct at the open public meeting;
- a member’s direct or indirect financial conflict of interest regarding an issue discussed at or action proposed to be taken at the open public meeting;
- a commission of a crime during the open public meeting

FREE
SPEECH



DISORDERLY
CONDUCT

Council Policy Manual

- ▶ Permits Council to expel any person after a “majority vote”
- ▶ Notes **possible** criminal prosecution for:
 - Disturbing an official meeting
 - Disorderly conduct
 - Obstruction of government operations
- ▶ Utah Code defines those crimes: 76-9-102, 76-3-103



ACTUAL DISRUPTION = DISORDERLY CONDUCT

Examples of Physical Disruption Upheld:


- ▶ Case #1: refused to leave podium; meeting delayed 20-30 min.
- ▶ Case #2: sat on floor at podium and refused to move

Examples of Verbal Disruption Upheld:

- ▶ Case #1: Told council chair and others multiple times to “shut up;” threatening and aggressive toward others, name calling (liars, thieves, big slab of stupid), but combined with physical disruption and not addressing agenda items
- ▶ Case #2: Personal attacks at Mayor & Council Members; aggressively defiant and combined with physical disruption and not addressing agenda items
- ▶ Case #3: yelling, out of turn, heckling causing a recess and delayed resumption of public meeting
- ▶ Case #4: Council member spoke loudly while being gaveled but combined with not addressing agenda items

Examples of Verbal Disruption Not Upheld:

- ▶ Case #5: Agenda invited public comment on any agenda or non-agenda item, citizen read from a prepared statement, criticized council members, council members expressed disapproval of statements, Chair concluded statements were campaigning and told her to stop, turned off mic and arrested her
- ▶ Case #6: Approached podium very agitated, became boisterous and noisy, spoke over Mayor, in a raised voice “you set this up,” clung to podium, “you’ll have to arrest me,” refused to leave till officer pried fingers off – expressive conduct as speech

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- ▶ Case #7: Council member argued with other council members over town governance; raised his voice; called another council member a “senile old _____”; referred to the Chair as a “bully”
 - ▶ Case #8: Accused city clerk of violating state constitution; called council member a “cheater” and former police officer as “old school”; disagreed with officer, asserting he should stay home
 - ▶ Case #9: Council member expressed strong objection to the budget; verbal exchange ensued with council member trying to defend against Chair’s attacks

Remarks unrelated to agenda or City business

- ▶ Case #1: Accused council members of stealing not germane to the agenda items
- ▶ Case #2: Personal attacks toward Mayor/City Council not germane to agenda items
- ▶ Case #10: personal attacks (adultery with wife) unrelated to city business