



THE TEXAS MUNICIPAL LAWYER™

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LEGALITIES IN CITIZEN PARTICIPATION AT CITY COUNCIL MEETINGS

Courts generally recognize a person's constitutional right to address a city council at a meeting. However, city councils may impose reasonable limitations on speakers and other attendees by, for example, designating when attendees may speak, limiting how many speakers may address an issue, and the length of time they may speak. A city council may also require the speaker to remain "on topic" by restricting content, but the city council cannot censor the speaker based on viewpoint.

Section 42.05 of the Texas Penal Code makes it a crime to purposefully disrupt a meeting. Specifically, it is a Class B misdemeanor for a person to intentionally prevent or disrupt a lawful meeting by physical action or verbal utterance. To be considered unlawful, the act must substantially impair the meeting, interfering with the First Amendment rights of others at the meeting. Generally, a person of ordinary intelligence is expected to know when they have impaired the ordinary conduct of a meeting. Under § 38.13 of the Texas Penal Code, it is a Class A misdemeanor if the person intentionally hinders an official

proceeding by noise or violent behavior, and continues despite explicit official request to stop the disruptive act.

Recently, the City Council in Peekskill, NY, banned attendees from hand clapping/applauding during city council meetings. See www.foxnews.com/us/2011/11/03/taking-liberties-clap-off/ The Mayor characterized the ban as a "politeness policy" designed to establish 'decorum' at the public meeting." However, some believe clapping is protected freedom of expression, thus making the ban unconstitutional. If a similar ban were passed in Texas, the courts would probably uphold such a ban if applied equally. The courts would determine whether the city council was acting reasonably in creating the limitation, or discriminating based on any particular speaker's point of view.

The courts have recognized the necessity of protecting a municipality's ability to conduct business. Thus, city councils can limit their meetings to the discussion of specific agenda items, and impose reasonable restrictions on speakers and other attendees to preserve civility and decorum at meetings. To ac-

complish this, it is recommended cities have a clear written agenda of topics, treat all speakers and attendees similarly, remind speakers of the topic should they begin to stray, prepare and follow a written policy for dealing with unruly citizens, and finally, before silencing a speaker, the city council should always consider whether they are creating an impression of content-based discrimination. See *The Municipal Lawyer Magazine* by IMLA, "Arrest That Woman for Disrupting the Hearing!" Handling the Unruly Speaker" March/April 2010; See Alan Bojorquez's paper at: www.texasmunicipallawyers.com/pdf/PublicAccess2009.pdf

UPCOMING EDUCATIONAL OPPORTUNITIES

April 21-22, 2012 U.T. School of Law's Land Use Planning Law Conference

Alan will speak on Hot Topics related to land use, including digital signs and mobile food vendors.

SimpliCITY Training Literature
available for download at:
www.texasmunicipallawyers.com/training-cityofficials.html

CLIENT NEWS

West Lake Hills

Congratulations to former City Councilmember Davin Fillpot. Fillpot recently received recognition for his service on the City Council, before resigning to become the municipality's first City Planner.



Davin Fillpot (r) receives plaque from Mayor Dave Claunch (l)

Dripping Springs

Christmas on Mercer Street

Happening December 3rd from 10:00 a.m.— 9:00 p.m. cityofdrippingssprings.com/index.php?BODY=resource/christmas

Salado Christmas Stroll Parade

Thursday, December 1st. Held downtown, 5:00 p.m.— 6:00 p.m. salado.com/calendar_single.cfm?id=1544

INTEGRITY AT CITY HALL

Q: May an attorney investigate the attorney's client?

A: The answer is complicated when the client is an entity. This issue surfaced recently in Texas when a city attorney investigated a city councilmember who allegedly used city resources for her private law practice. Under the Texas Disciplinary Rules of Professional Conduct, Rule 1.12, if an attorney's client is the entity (i.e., the city), protecting the entity's interests (and not a par-

ticular person's) is the primary duty. Before a city attorney investigates a councilmember, the attorney should receive authority from the city. The attorney then should recommend the councilmember to seek independent legal representation. Whether or not the attorney is creating a conflict of interest by investigating the councilmember is debatable. The safest route, especially where the attorney gave the councilmember legal advice regarding the topic of investigation prior to the investigation, is for the city to seek outside counsel to perform the investigation. This alleviates potential conflicts of interest.

In a situation where the client is an organization, the attorney may investigate an employee upon the client's request. The reason an attorney may investigate an employee, but maybe not a councilmember in certain circumstances, is because the councilmember has a say in the appointment of the city attorney, a unique attribute the employee lacks. Again, the attorney should recommend the employee seek outside counsel and refrain from providing the employee any legal advice.

ABOUT THE FIRM

- Double congratulations to Joseph Deeb, (St. Mary's, 2011) who successfully passed the bar and joined our team as an Associate in November. We are very proud of his accomplishments, and glad to have him on our team (he has served as the firm's Law Clerk since September 2010). Joseph



Deeb

is also a talented Austin-area musician who plays guitar at occasional gigs around town.

Halloween Fun at the Firm



Pictured (l) to (r) are Kathy, Alan, Deborah, Jill and Joseph.

- Please mark your calendars for the firm's 10th Annual Christmas Party on December 2nd!



- Dottie Palumbo, Of Counsel for the firm, recently received an award from the Denton County Transportation Authority (DCTA) for her many years of dedication and service as a DCTA board member. Congratulations, Dottie!



Palumbo

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