



MMA Alert: Public Comment Sessions at Open Meetings

Public comment policy ruled unconstitutional

On March 7, 2023, the Supreme Judicial Court ruled that the Public Participation Policy adopted by the Southborough Select Board violates the right to peaceably assemble and right to free speech as protected under Articles 19 and 16, respectively, of the Massachusetts Constitution. Under the Southborough Policy, citizens participating in the public comment session of Select Board meetings were instructed "to act in a professional and courteous manner" and cautioned that all dialogue "must be respectful and courteous, [and] free of rude, personal or slanderous remarks." In striking down this Policy, the SJC ruled that while a government body may encourage civility at its meetings, it cannot legally require it. Citizens are free to address government officials "vehemently, critically, and personally ...," even to the point where the plaintiff, in this case, was free to yell at the acting Select Board Chair, "You're a Hitler!" Because the Massachusetts Constitution provides for "a robust protection of public criticism of governmental action and officials," the SJC remanded the case to the Worcester Superior Court with an order that the Superior Court declare the Public Participation Policy unconstitutional.

Review rules regarding public participation in your community

Many Massachusetts cities, towns, and public school districts have adopted codes of civility or rules of order and decorum similar to the Southborough Policy. Following the Barron decision, those codes and rules may now be unenforceable. The Massachusetts Municipal Association encourages all Members to immediately review any codes or rules regarding public participation adopted in their communities. If local boards, committees, or commissions continue to include public comment sessions on their open meeting agendas, they must take care that free speech rights of public speakers are not unduly restricted. Government officials cannot silence criticism of their policies or decisions even when such criticism may be severe and harsh. Nor can they ban rude or slanderous personal attacks. Codes or rules that may have the effect of silencing such criticism or banning such attacks should be rescinded.

Approaches you may want to take

This is not to say that cities, towns, and school districts must tolerate open meeting chaos.

- Local government bodies may still require that public comment sessions be conducted in an "orderly and peaceable" manner.
- They may designate when public comment sessions shall be allowed and may impose and enforce time limits on public speakers.
- They may also adopt rules preventing speakers from disrupting others and authorizing the removal of speakers who engage in such disruptions.

Going forward, crafting rules that enable local boards, committees, and commissions to conduct government business in an "orderly and peaceable" manner without infringing upon the free speech right of public speakers may present something of a constitutional tightrope. But after Barron, civil discourse must yield to robust debate.

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