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# "Public Meetings Gone Wild: Keep Your Governing Body from Ending Up in Court Or on You Tube"

Handout by
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# CONTROLLING CITIZEN BEHAVIOR DURING PUBLIC HEARINGS AND CITIZEN COMMENT PERIODS

*"I have always been among those who believed that the greatest freedom of speech was the greatest safety, because if a man is a fool, the best thing to do is to encourage him to advertise the fact by speaking"* Woodrow T. Wilson

*"The best argument against democracy is a five minute conversation with the average voter."* Winston Churchill

## PART I—BACKGROUND

Meetings of local governing bodies are largely just that – meetings of the local governing body. Under the Virginia Freedom of Information Act (FOIA) the public is entitled to attend such meetings and, if not disruptive, to record (audio and video) those portions of meetings that are not conducted as a closed meeting. The FOIA does not give members of the public the right to speak at public meetings, just the right to attend.

However, a variety of Virginia laws require public hearings before a local governing body can do certain things such as change the rates of taxation, rezone property, convey an interest in public property and for a number of other specific legislative actions. Additionally, a local governing body can grant citizens greater speaking opportunities than those mandated by law. Some localities hold public hearings on the adoption of all proposed ordinances and amendments. Many localities have also created "citizen comment periods," "citizen comment on unscheduled matters," "citizens' time" and so on to allow general comments by the public on whatever topics interest them.

There is no Constitutional right for a citizen to speak at a public meeting unless that right has been granted by the General Assembly or the governing body itself. Because citizens have the ability to communicate with their elected officials by telephone, by email, by letter, in person, etc. there is no Constitutional right for citizens to be allowed to comment during a governing body's meetings. "The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy." *Minnesota State Bd. for Community Colleges v. Knight*, 465 U.S. 271 (1984).

## PART II—THE DIFFERENT TYPES OF PUBLIC FORUMS

**Types of Public Forums (the legal stuff)**

Whether or not restrictions can be placed on citizen speech depends upon the type of forum in which the speech is taking place. The courts have recognized three types of forums.

> 1. <u>Traditional Public Forum</u>. A traditional public forum is not created by the government but exists by law. A traditional public forum is government-owned property where free speech has traditionally been permitted such as in front of the courthouse ("the courthouse square"), the public sidewalks, the parks, the streets, etc. Citizens have a Constitutional right to speak in traditional public forums without government-imposed

restrictions unless the restrictions are reasonable time, place, and manner restrictions; are content-neutral; and are "narrowly tailored" to serve a significant government interest such as protecting the public safety. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293, 295 (1984).

2. Designated Public Forum (sometimes called a "limited public forum"). A designated public forum is created by the government for expressive activity of a specific type such as assemblies and speeches. In a limited public forum discussions or activities and citizen speech can be limited to limited to certain topics and certain restrictions can be placed on the duration and civility of the speech. The government creates a designated public forum when it intentionally opens a nontraditional forum for expressive activity of a certain kind or of a certain type. Examples of designated public forum include such things as a municipal meeting room that has been specifically designated to certain groups or topics, a state fair, a public art gallery or civic center, etc. Once a designated public forum has been created, the government cannot, however, discriminate in its treatment of speakers based on the content of speech. *City of Madison v. Wisconsin Employment Relations Commission*, 429 U.S. 167, 176 (1976).

3. Nonpublic Forum. A nonpublic forum is government property that is not open to public expression. For example, jails, public schools, the city manager's office and military bases are nonpublic forums. Citizens do not have to be allowed to speak at nonpublic forums.

A meeting of a local governing body is not a traditional public forum; it falls into the category of a designated or limited public forum. Citizens may be allowed to speak at a meeting of the public body, but the governing body has the right to impose content-neutral time, place and manner restrictions on citizen speech in order to achieve legitimate interests of the governing body such as controlling the agenda, managing time and preventing disruption. During a meeting of the governing body the forum is constantly changing between a limited public forum and a nonpublic form. Citizens do not have to be allowed to speak during the discussions, debates, and deliberations of the members of the governing body, but can speak during public hearings and citizen comment periods. Therefore, the vast majority of what happens at a public meeting falls into the category of a nonpublic forum. This includes the discussions, debates, and deliberations of the public body itself. However, at certain times during a meeting when the governing body holds a public hearing or allows a citizen comment period it creates a momentary limited public forum. Public hearings and citizen comment periods open a limited public forum, but when the public hearing or citizen comment period is closed, so is the limited public forum and the citizens' right to speak comes to an end.

## PART III—PLACING RESTRICTIONS ON CITIZEN COMMENTS

### The Right to Impose Limitations on Speakers

The courts have long recognized that a governing body has the right to place limits on citizen comments during public hearings and citizen comment periods in order to achieve the legitimate purposes of controlling the agenda, preventing disruption, making efficient use of the governing body's time, etc . "There is a significant governmental interest in conducting orderly, efficient

meetings of public bodies." *Rowe v. City of Coca, Fla.*, 358 F. 3d 800, 803 (11th Cir. 2004). "A speaker may disrupt a City Council meeting by speaking too long, by being unduly repetitious, or by extended discussion of irrelevancies." *White v. City of Norwalk*, 900 F. 2d 1421 (9th Cir. 1990). "To deny the presiding officer the authority to regulate irrelevant debate and disruptive behavior at a public meeting . . . would cause such meetings to drag on interminably, and deny others the opportunity to voice their opinions." *Jones v. Heyman*, 888 F. 2d 1328 (11th Cir.1989). These cases stand for the proposition that governing bodies may limit discussion to specified agenda items and may impose restrictions to preserve civility and decorum "necessary to further the forum's purpose of conducting public business." *See also,* the cases of *Good News Club v. Milford Cent. Sch.* 533 U.S. 98 (2001) and *Collinson v. Gott*, 895 F.2d 994 (4th Cir. 1990).

Common restrictions include such procedural rules as (1) limiting the number of speakers [e.g. no more than five per comment session]; (2) time limits on speakers [no more than three minutes per speaker and speakers may not donate or yield time to other speakers]; (3) requiring speakers to sign up to speak in advance of the meeting; (4) limiting the number of times a citizen may speak per meeting; (5) prohibiting the use of profanity, vulgarity or personal attacks on members of the governing body or anyone else; (6) prohibiting speakers from promoting of private business ventures; (7) prohibiting speakers from campaigning for public office; and (8) prohibiting the discussion of matters that are the subject of litigation. Limitations on citizen behavior during public hearings and comment periods should be set forth in written rules of procedure and formally adopted by the governing body.

Examples of restrictions on citizen speech have been upheld by the courts:

- *Collinson v. Gott*, 895 F.2d 994 (4th Cir. 1990) [a two-minute limitation per speaker is constitutionally permissable]

- *McClure v. City of Hurricane*, 2011 WL 1485599 (S.D.W.Va.) [a developer was not denied his First Amendment rights when he was denied permission to speak at meeting on an issue that was in litigation]

- *Eichenlaub v. Township of Indiana*, 385 F. 3d 274 (3d Cir. 2004) [a citizen's First Amendment rights were not violated when he was not allowed to speak at a public hearing for being "repetitive and truculent."]

- *Freeland v. Orange County*, 273 N. C. 452 (1968) [a limit on the number of persons that were allowed to speak on a zoning petition was upheld; the court found that the governing body was not required to hear all persons in attendance without regard to time]

- *Sa'ad El-Amin v. West* (E. D. Va. 1988) (1988 U. S. Dist. Lexis 17511) [a Richmond City Council rule limiting the number of appearances any one individual could make during the citizens' comment period within a defined period of time was constitutional]

**Sticking To and Wandering Off the Topic**

Since public hearings and comment periods are limited public forums, the government can place limits on the topics of discussion and insist that speakers remain on topic and can cut off speech which wanders beyond that topic.

*Rosenberger v. Rector & Visitors of Univ. of Va.,* 515 U.S. 819, 829 (1995) ("When the State establishes a limited public forum…the State may be justified in reserving [its forum] for certain groups or for the discussion of certain topics."). *Adams v. City of Wellsburg*, 2008 WL 2340374 (N.D.W.Va) a governing body may limit speech to "city business"; impose time limits on public comment; enforce restrictions to preserve decorum and civility necessary to conduct public business; and "cut off speech which it reasonably perceives to be or imminently to threaten a disruption of the orderly and fair progress of discussion whether by virtue of its irrelevance, its duration or its very tone or manner."

**Engaging in Personal Attacks**

A number of public bodies have adopted rules of procedure that prohibit speakers from engaging in personal attacks on others. However, prohibitions against "personal attacks," have proved to be somewhat difficult to enforce. The courts have held that public officials are open to fair criticism regarding the performance of their duties and have to tolerate divergent views, even if such views are critical and unpopular. "One of the prerogatives of American citizenship is the right to criticize public men and measures – and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation." *Baumgartner v. United States*, 322 U. S. 665, 673-674 (1944). But comments that go beyond fair criticism and constitute insults do not have to be tolerated.

The key to determining the difference between permitted criticism and inappropriate personal attacks depends upon whether or not comments in question reasonably relate to the performance and qualifications of a public figure or are comments that have no bearing on performance and qualifications and serve no purpose other than to insult, belittle or denigrate. Under the First Amendment, the first category of comments must be allowed; the second category of comments can be prohibited. In *Steinburg v. Chesterfield County Planning Commission*, 527 F. 3d 377 (4th Cir. 2008), the court found that a "no personal attacks policy" focuses on two evils that could erode the "beneficence of orderly public discussion:"

(a) A comment that is an insult directed at a person and not on a topic of discussion is *per se* irrelevant (unless the topic is the qualifications of a person, of course)

(b) An insulting comment leads to a defensive response and counter-attack that has "the real potential to disrupt the orderly conduct of the meeting,"

The court held that a public body has a "significant governmental interest" in preventing both of these "evils" and enforcement of a personal attacks policy is constitutionally appropriate even if it has the incidental effect of interfering with the content of a speaker's speech. The court also found that an insulting speaker has an "ample alternative channel" for communication of his substantive ideas, that is, he can make the same speech without the insults.

## PART IV—ENFORCING THE RULES OF CONDUCT

Bad conduct by a citizen may be sufficient to warrant removal from or being silenced at a public meeting. "Rules of Conduct" are appropriate and enforceable and can be used to justify ejection of an unruly citizen if he is disturbing or impeding a meeting. *White v. City of Norwalk*, 900 F.

2d 1421 (9th Cir. 1990). A governing body can impose and enforce rules to ensure proper decorum at public meetings.

Disruptions that can be stopped include such things as:

- continuing to talk about irrelevancies when told to stop and to address the topic at hand
- not stopping speech after time deadline has passed
- tone or manner of speech that threatens to create a disruption of the "orderly and fair progress of the discussion"

In *Steinburg v. Chesterfield County Planning Commission*, 527 F. 3d 377 (4th Cir. 2008), the Chesterfield County Planning Commission held a public hearing on a request by a rezoning applicant to defer the public hearing of the application for 30 days. Three speakers spoke to the deferral. The first two wandered into a monologue about the substance of the rezoning application rather than speaking to the deferral but, when brought back to the deferral topic by the chair, both speakers stated that they supported the deferral. Mr. Steinburg, despite efforts by the chair to have him address the deferral, never once gave his position for or against it. Instead, he used his time to attack one of the Planning Commissioners for talking while the other two speakers were speaking and "not paying attention." The chair eventually declared that Steinburg was out of order for refusing to address the deferral and ordered him to sit down. When Steinburg refused, he was escorted from the room by two police officers. Steinburg sued the Planning Commission for violating his First Amendment rights and the court dismissed the lawsuit. The court concluded from watching the videotape of the meeting that Steinburg had been removed from the meeting because he would not address the topic of the deferral and his behavior disrupted the orderly progress of the meeting. However, in its opinion the court seemed to say that Steinburg could have also been removed from the meeting for engaging in a personal attack against a member of the Planning Commission.

In *McMahon v. Ritter*, 2002 WL 1067808 (Cal. Ct. App. 2002), the court held that it was not a First Amendment violation to have citizen who dumped a pile of trash on floor during a school board meeting to "dramatize" the school system's failure to keep school grounds clean arrested for disrupting the meeting.

In *Eichenlaub v. Township of Indiana*, 385 F. 3d 274 (3d Cir. 2004), the court held that it was proper to remove a citizen from a township board hearing for being "repetitive and truculent" and for "repeatedly interrupting the chairman."

Stopping citizens that refuse to follow the rules of procedure and behave in a disruptive manner is legal as long as the enforcement action itself is content-neutral; that the action is taken because the citizen is refusing to follow the rules of procedure and not because the governing body disagrees with the content of the citizen's speech.

## PART V—BEHAVIOR THAT MUST BE TOLERATED

Some conduct while offensive is not necessarily disruptive to the public process and therefore cannot be squelched.

**Making Gestures**

In *Norse v. Town of Santa Cruz*, 629 F. 3d 966 (9th Cir. 2010) Norse was ejected from a Santa Cruz City Council meeting when – to express his displeasure with council – he gave them a brief Nazi salute. It is clear from the video tape that the meeting was not disrupted in any meaningful way until one council member began to demand loudly that Norse be thrown out (some council members did not even see the salute). The court held that the salute could not be construed to have created or threatened to create a disturbance and that the city officials should not have had Norse removed from the meeting.

**Wearing Masks**

In *City of Dayton v. Esrati* (Court of Appeals of Ohio, Second District, Montgomery County, 1997), the court held that a regular attendee of meetings of and a "persistent critic" of the Dayton City Commission could not be ejected from a Commission meeting for donning a Ninja mask to express his displeasure with the Commission. The court held that wearing the mask was symbolic expression was protected First Amendment speech, noting that the citizen "remained seated, made no physical gestures, made no speeches, no noises or any other commotion, but rather, sat silently."

**Wearing Political Buttons, T-shirts, etc. and Holding Signs**

A governing body probably cannot bar citizens from wearing clothing (buttons, shirts, hats, etc.) with political messages on them to its meetings. However, a governing body probably can ban signs and banners from its meeting room. In *Godwin v. East Baton Rouge Parish School Bd.*, 408 So. 2d 1214 (La. 1981), the court held that a school board could prohibit all hand-held signs within its meeting room.

## PART VI—BANNING MISBEHAVING CITIZENS FROM FUTURE MEETINGS

A public body may not impose a "life sentence" prohibiting a citizen from addressing the body in the future for a present display of bad conduct. *Surita v. Hyde*, 665 F. 3d 860 (7th Cir. 2011). In the *Surita* case, opponents of a city towing ordinance protested at a variety of rallies and marches. During a large rally at a local mall, a protest organizer (Surita) was reported to have exhibited behavior that caused the city's community liaison officer to believe that Suirta intended to attack her physically. Surita later appeared at a city council meeting to speak during a public comment period about the towing ordinance. He was told he could not speak until he had apologized to the liaison officer. The mayor told Surita that his behavior was inexcusable and that "any man that does that to a woman is lower than a rat." The mayor went on to say that if Surita did not apologize, the "next time" Surita confronts the liaison officer, the mayor "will have [Surita] arrested and booked on intimidation." Surita sued the mayor for unconstitutional infringement of his Free Speech rights.

The court found that there was "no doubt" that the public comment period was "a designated public forum", citing *Collinson, City of Madison* and *White v. City of Norwalk*. It held that the government cannot favor one speaker over another but "neither may it disfavor one speaker over another." Other speakers were allowed to talk about towing but not Surita. Significantly, Surita's

speech would have been on topic and there was no evidence he was acting in a disorderly or belligerent manner at the meeting. Banning speech as a consequence for prior speech or conduct alone, without evidence of current disruptive behavior was not appropriate.

However, bad behavior may be punishable after the fact when the citizen speaker is also a government employee. In the case of *Meaney v. Dever*, 326 F. 3d 283 (1st Cir. 2003) the court held that an off-duty police officer blew a truck horn outside the room where the mayor's inauguration was being held was not engaging in protected speech (although it was expressive speech) because it was inherently disruptive. It was also not intended to communicate any point of view but was intended to anger the mayor for whom the officer was carrying a grudge. Therefore, the "speech" could be regulated in a content-neutral fashion and speech that is disruptive can be prohibited or – as in this situation – punished after the fact. Accordingly, city officials did not violate the officer's rights under the First Amendment (nor engage in unlawful retaliation) by disciplining him for his horn-blowing behavior.

## PART VI—LYNCHBURG'S RULES OF PROCEDURE FOR CITIZEN BEHAVIOR

The rules of procedure adopted by the Lynchburg City Council for public hearings and citizen comments provide:

**Time Limits**

● There shall be a time limit for each individual speaker of 3 minutes.

● A representative of a group may have up to five (5) minutes to make a presentation. The representative shall identify the group at the beginning of his or her presentation. A group my have no more than one spokesperson.

● Speakers are not permitted to donate time to other speakers.

● No speaker's time shall be extended except by unanimous consent or a two-thirds (2/3) vote of the Council members present.

**Prohibited Conduct**

Persons appearing before the Council will not be allowed to:

● Campaign for public office;

● Promote private business ventures;

● Use profanity or vulgar language or gestures;

● Use language which insults or demeans any person or which, when directed at a public official or employee is not related to his or her official duties, however, citizens have the right to comment on the performance, conduct, and qualifications of public figures;

● Make non-germane or frivolous statements;

● Interrupt other speakers or engage in behavior that disrupts the meeting including but not limited to applause, cheers, jeers, etc.;

● Engage in behavior that intimidates others;

● Address the Council on issues that do not concern the services, policies or affairs of the city.

**Placement on Agenda**

● Individuals or groups wishing to speak at a regular Council meeting at a time other than during a public hearing shall submit a written request to the Clerk of Council by noon on the Wednesday prior to the regular meeting date.

### PART VII--SOME FINAL THOUGHTS

● There is no Constitutional right for a citizen to speak at a public meeting unless that right has been granted by the General Assembly (public hearings) or the governing body itself (citizen comment periods).

● A governing body has the right to adopt rules of procedure that place some restrictions on citizen comments during public hearings and citizen comment periods in order to control its agenda, prevent disruption and make efficient use of the governing body's time.

● Rules of procedure should be in writing, should be formally adopted by the governing body and the governing body should treat all speakers similarly, and permit them equal time to speak, and keep all speakers "on topic."

● A governing body can enforce its rules of procedure and can have a citizen removed from a meeting for engaging in disruptive behavior.

● The decision to remove a citizen from a meeting must be motivated by a desire to maintain an orderly meeting and not by a desire to silence the individual (viewpoint discrimination) or by anger or personal animosity.

● As a practical matter, removing a citizen from a meeting draws even more attention to the speaker's comments and gives the citizen more opportunity to create a controversy. There may be occasions when a speaker's comments are so disruptive or inappropriate that it is necessary to stop the speaker. However, in general, the best approach is to allow a controversial speaker to speak for his allotted time and to refrain from asking questions or engaging in a public debate with the speaker.

## DEALING WITH INAPPROPRIATE BEHAVIOR BY THE MEMBERS OF THE GOVERNING BODY

*"We Have Met The Enemy and He Is Us."* Pogo by Walt Kelly

## PART I—THE DILEMA

Every governing body is different, with its own individual personalities meshing for one common cause: to conduct the affairs of the locality. Some members have years of experience. Others are neophytes. Some governing body members are reticent, thoughtful and measured in their approaches. Others are more vociferous, taking charge and moving things forward quickly and aggressively. These are all legitimate approaches to running a locality, and any one of them can work well for the benefit of the community.

### A. (Mostly) Good Apples

The vast majority of governing body members approach their duties with a sense of integrity and a desire to do what is best for the citizens they were elected to serve. It is rare to see a member of a governing body allow their self-interest to get the better of them, and to create difficult situations for everyone else around them. There are times, however, when one member's personality or approach to the job can throw a wrench into the whole system. They are the people who try to dominate a meeting, try to push their agendas no matter what the cost, and try to bully their fellow members into seeing things their way. They may not even realize they are doing it. Whatever the reason though, whether their behavior takes the form of inappropriate aggression, passive-aggressive foot-dragging or simple ignorance, the result is the same: both their fellow members of the governing body and staff suffer.

### B. What's the Harm?

So your governing body has a bully in its midst, or someone who continually drives meetings off the tracks, or who clings to their own agenda regardless of the task at hand. What's the big deal? Is it really worth ruffling the problem person's feathers?

In a word, the answer is yes. It can become difficult to move forward and transact business, when no one is willing to address the wayward member's inappropriate behavior the governing body can start running into setbacks and meetings do not progress. A troublemaker on the governing body can take a great toll. The good members can shrink to the side and not voice their opinions in the face of bad behavior. They may not speak up if they keep getting drowned out. Staff members can suffer at the hands of a loose-cannon governing body member as well. Such behavior disrupts the chain of command, leading to bigger and potentially more serious problems down the road.

The failure of a governing body to deal with a misbehaving member can also have legal consequences for the locality. For example:

1. A member of the governing body that mistreats staff members by using inappropriate language, asking the staff member to perform personal tasks, hugging or touching staff in an inappropriate manner, etc. may be putting the locality at risk for a lawsuit alleging harassment or a hostile work environment. If the other members of the governing body do not take appropriate steps to avoid the appearance of agreement with the objectionable

behavior of a fellow member, the inappropriate behavior may be considered to have been sanctioned by the governing body

2. A member of a governing body that insists on opening a meeting with a Christian prayer puts the locality at risk of a lawsuit.

3. A member of a governing body that leaks a confidential legal opinion of the local government attorney can result in the loss of the attorney client privilege and with the loss of the attorney client privilege it is possible the opinion can be used in court against the locality. In order to protect the attorney client privilege the other members of the governing body need to take affirmative action against the member that leaked the opinion. *Chase, et al v. City of Portsmouth, et al*, U.S. Dist. LEXIS 29551 (E.D. Va. Nov. 16, 2005

If one member of the governing body engages in disruptive behavior or is intent on championing their own agenda at the expense of the bigger picture, it is the responsibility of the other members of the body, not staff, to remind the disruptive member about their duties as an elected official. There are a number of ways to try and rein in an out-of-control member of a governing body, but it's not always easy.

## PART II—"COME LET US REASON TOGETHER."

President Lyndon B. Johnson's favorite expression when trying to get opposing groups together was "Come let us reason together." Consider this expression when trying to deal with a disruptive member of a governing body. Often the best solutions come when members try to resolve problems first by talking with the member in question. One wise parliamentarian said, "If you're having a problem with someone, take him out to lunch." He believed that politely talking with someone in a friendly atmosphere could resolve the difficulty without embarrassment to the person or the organization.

The first step that should be considered is a serious discussion with the "problem person" by one or more of the other members of the governing body. Meeting one-on-one outside of a public meeting means that little or no time will be directly taken up with the issue during actual governing body meetings. These face-to-face talks have the added benefit of being less threatening to the troublemaker, and allow them to save face.

Part of reminding the individual in question of their responsibility should also be a reminder of the proper procedures for getting their interests or questions before the rest of the governing body. There is a process that needs to be followed. Before any matters can be discussed, they must be put on the agenda and they must be put there after going through the proper channels.

## PART III.—PARLIAMENTARY PROCEDURE

> "*Hell, there ain't no rules around here! We're trying to accomplish something*."
> Thomas Alva Edison

If a private discussion with the disruptive member is not successful, another approach to dealing with an unruly member and trying to contain inappropriate behavior during meetings is for the

presiding officer of the governing body to run the meetings in strict compliance with the rules of procedure. It is often the absence of structure in meetings that allows those demanding voices to try to fill the vacuum.

Most public bodies employ rules of procedure for the conduct of their meetings. The majority of public bodies use *Robert's Rules of Order* (hereafter *Robert's*), but often supplement *Robert's* with "local" or "special" rules of procedure. Because of their common usage, the references in this outline to parliamentary procedure are based on *Robert's* and references are to *Robert's Rules of Order, Newly Revised,* 11th Edition.

Sometimes you hear complaints that *Robert's* is overly complicated and is used to thwart the wishes of the democratically elected majority of a local governing body. In reality, *Robert's* was created to promote the efficient and orderly operation of business. *Robert's* balances individual and majority rights. Properly used, *Robert's* provides all the members of a governing body with an opportunity to be heard, but also ensures that a minority cannot disrupt a meeting and prevent a majority from transacting business. Following *Robert's* can help control and ensure the effective operation of meetings. Unfortunately, some members of governing bodies only turn to *Robert's* when faced with the prospect that a vote is going to or has gone against them in an effort to prevent a vote on an issue or to try to revive an issue that has already been decided. They do not use *Robert's* to promote effective parliamentary procedure, but rather to try and deal with a particular issue.

**The Proper Role of the Local Government Attorney as the Parliamentarian**. The local government attorney is frequently designated to serve as the parliamentarian for the local governing body. It is important to remember that in serving as parliamentarian it is not the local government attorney's role to try and direct the course of the meeting or to rule on points of order. Those are the roles of the presiding officer. Only the presiding officer may rule on matters of procedure. *Robert's*, Chapter XV, Officers; Minutes and Officers' Reports, §47, at page 449. In serving as the parliamentarian it is the local government attorney's role to advise the presiding officer when points of order are raised. It is a misconception to think that once the meeting is in a state of collapse the local government attorney rides in on a white horse, pronounces a ruling, restores order and then rides off into the sunset. The parliamentarian's role in a meeting is purely an advisory and a consultative one. A good parliamentarian should stay in the background as much as possible.

**The Role of the Presiding Officer in Maintaining Decorum**. Under *Robert's* the basic steps of parliamentary procedure for a meeting are as follows:

Step I Declare a quorum
Step II Get a main motion on the floor so the issue can be debated
Step III Debate the motion
Step IV Amend the motion
Step V Close debate on the motion
Step VI Vote on the motion
Step VII On occasion, reconsider the vote

However, *Robert's* contains additional rules of parliamentary procedure the presiding officer can use to try and maintain decorum and prevent a disorderly member of the governing body from disrupting the meeting. In order for this approach to be successful, the presiding officer must be willing to invoke these procedures and the other members of the public body must be willing to support the presiding officer's efforts to run the meetings in strict compliance with the rules of procedure. Some of the additional rules of parliamentary procedure the presiding officer can use include:

**A. Debate**

**1. Prior to beginning debate**.

**(a)** ***Recognition by presiding officer.*** Before a member of a public body can speak or make a motion, the presiding officer can insist that any member who wishes to speak must be recognized by the presiding officer. *Robert's*, Chapter XII, Summary of Procedures Incident to Debate, § 43, at page 376.

**(b)** ***Making a motion.*** The presiding office should require that a member of the governing body make a motion before discussion begins. *Robert's*, Chapter XII, Summary of Procedures Incident to Debate, § 43, at page 386.

**(c)** ***The motion must be seconded***. Once a member of a governing body has made a motion, the motion needs to be seconded. One of the goals of parliamentary procedure is to balance individual and majority rights. Requiring a second to a motion prevents a governing body from having to consider a motion that only one member wishes to discuss. Prior to debating a motion, a member of the governing body may raise a point of order that the motion has not been seconded. If no one is willing to second the motion it dies for lack of a second and the governing body moves on to the next item of business. *Robert's,* Chapter II, The Conduct of Business in a Deliberative Assembly, §4, at page 35.

**2. During debate.**

**(a)** ***Length and number of speeches.*** Under *Robert's* each member of a body has the right to speak twice on the same question during a meeting but cannot make a second speech on the same issue so long as any member who has not spoken on that question desires the floor. A member who has spoken twice on a particular question during a meeting has exhausted his right to debate the question for that day. In the absence of a local rule the maximum time any member may speak on a matter is ten minutes. *Robert's*, Chapter XII, Length and Number of Speeches, §43, at page 387-389.

**(b)** ***The maker speaks first***. The maker of a motion has the right to speak first if he wishes to. *Robert's*, Chapter XII, Summary of Procedures Incident to Debate, § 43, at page 379.

**(c)** ***Remarks must be germane***. During debate a member's remarks must be germane to the issue before the body; a member's statements must have a bearing on whether the pending motion should be adopted or rejected. *Robert's*, Chapter XII, Decorum in Debate, §43, at page 392.

(**d**) ***Refraining from personal attacks.*** A member can condemn the nature or likely consequences of a proposed measure in strong terms, but must avoid personalities, and under no circumstances can he attack or question the motives of another member. The measure not the man is the subject of debate. *Robert's*, Chapter XII, Decorum in Debate, §43, at page 392.

**(e)** ***Refraining from speaking adversely on a prior action***. During debate of an issue a member cannot comment adversely on any prior action of the body that is not currently under discussion unless a motion to reconsider, rescind or amend is pending. *Robert's*, Chapter XII, Decorum in Debate, §43, at page 393.

**(f)** ***Arguing against one's own motion***. During debate a member that makes a motion is not allowed to argue against his own motion. A member who makes a motion is not obligated to speak at all, but if he does he is obligated to take a favorable position. *Robert's*, Chapter XII, Decorum in Debate, §43, at page 393.

**(g)** ***Actions by the presiding officer.*** In meetings where controversial issues are debated, some members may get so excited that they talk out of turn and continually seek the floor to rebut those who do not agree with them. In such situations the presiding officer should remain calm and firmly remind the member of the proper rules of debate.

The presiding officer can use precatory language to diffuse tense debate. *Robert's*, Chapter XII, Decorum in Debate, §43, at page 392.

● Instead of saying "Council Member Smith, you are out of order," say "The motion is out of order"

● Instead of saying, "Council Member Smith, your discussion is not germane." say "Will the Council Member please confine his remarks to the issue under discussion."

● Rephrase potentially inflammatory statements. Instead of "That's a lie," try "I believe there is strong evidence the council member is mistaken."

If the member does not heed the diplomatic remarks of the presiding officer and continues his or her behavior, the presiding officer's next step is to *call the member to order*. The presiding officer names the offender and states what he or she has done wrong.

> **Presiding Officer:** Council Member Smith! I have asked you repeatedly not to speak after each speaker. This is the third time I have reminded you that you must be recognized prior to speaking, yet you continue to speak without proper recognition.

**B. Closing Debate**

**Call the question**

The motion "I call the question" or similar motions immediately closes debate on, stops amendment of, and brings the governing body to an immediate vote on a pending question. In order to make a motion to call the question a member of a governing body must first obtain the

floor by being duly recognized to speak by the presiding officer. If all members of the governing body are in agreement to ending debate on an issue—the presiding officer can simply ask if there is any objection to closing debate and members can express their consent by acclamation—the vote will immediately be taken. If one or more members objects to ending debate, the motion to call the question must be seconded and approved by a two-thirds vote to become effective. *Robert's*, Chapter VI, Previous Question, §16, at page 201.

**C. Preventing Repetitive Discussions**

There are steps that can be taken to prevent a member of a governing body from bringing up the same topic time and time again. A member who loses a vote on an issue does not have to be allowed to waste the time of the other members with repeated efforts to reconsider the same issue.

**1. Motion to object to consideration of a question**

This is a motion that can be made to prevent a member from bringing up a topic time and time again. The motion:

● takes precedence over the original motion
● must be made before there has been any debate on the motion
● no second is needed
● is not debatable
● is not amendable
● requires a 2/3 vote to pass
● can be reconsidered

*Robert's*, Chapter VIII, Objection to the Consideration of a Question, §26, at page 267.

**2. Readdressing the same issue**

A basic principal of parliamentary procedure is that a body cannot be asked to discuss the same or substantially the same, question twice during a meeting-except through a motion to reconsider a vote. If a member tries to bring up a matter that has already been dealt with the presiding officer should point out that item has been dealt with and it is time to move on to the issue at hand. *Robert's*, Chapter X, Renewal of Motions, §38, at page 336.

**D. Suggesting a Recess**

If tempers flair or the meeting is starting to deteriorate into chaos the presiding officer may want to suggest that the members take a brief recess to let things settle down. The motion to recess is not in order when someone has the floor, requires a second, is not debatable, is amendable as to the length of the recess, and requires a majority vote. *Robert's*, Chapter VII, Privileged Motions, §20, at page 230-231.

> **Presiding Officer:** I think a ten minute recess would be in order and I will entertain a motion to that effect.

**E. Raising a Point of Order**

When a member of a public body believes another member is not following the rules of procedure he can raise a "point of order." A point of order:

● seeks to correct a breach of the rules
● is not debatable
● the presiding officer rules (with assistance from the parliamentarian)
● the presiding officer's ruling stands unless appealed
● it cannot be reconsidered

*Robert's*, Chapter VIII, Incidental Motions, §23, at page 247-249.

By a motion and a second, any two members of the governing body can appeal the presiding officer's decision. An appeal:

● lets the members of the governing body decide if the presiding officer is correct
● must be timely
● is debatable
● is not amendable
● a majority or tie vote sustains the presiding officer's decision
● a vote on an appeal can be reconsidered

*Robert's*, Chapter VIII, Incidental Motions, §23, at page 255-258.

**F. Less Formal Rules of Procedure**

*Robert's* recognizes that some of the formality necessary in a large assembly may not be needed for smaller bodies. A smaller body is one in which there are no more than a dozen members present. Therefore, a smaller body may elect to follow the more informal rules of procedure. The usual parliamentary rules apply, but with several exceptions, the most notable being:

● members may speak or make motions without being recognized by the presiding officer
● motions do not need to be seconded
● there is no limit on the number of times a person can speak on an issue
● informal discussion is permitted even it there is no motion pending
● the presiding officer can speak, make motions and vote without relinquishing the chair

*Robert's*, Chapter XVI, Boards and Committees, §49, at page 487-488.

If a governing body decides to follow the more informal rules of procedure it will be more difficult for the presiding officer to use parliamentary procedure to try and maintain decorum and prevent an unruly member of the governing body from disrupting the meeting.

**G. Alternative Rules of Procedure**

*Robert's Rules of Order* was not developed with governing bodies in mind. Accordingly, there are a number of provisions in *Robert's* that do not apply to a governing body (e.g. voting by

mail, expelling a member from office, etc.). Therefore, a governing body may decide that its interests are better served by choosing to use alternative rules of procedure. There are several alternative rules of procedure a locality can follow instead of *Robert's. Modern Parliamentary Procedure* by Ray Keesey, *The Modern Rules of Order*, Second Edition by Donald Tortorice and *Suggested Rules of Procedure for Small Local Government Boards* by the Institute of Government of the University of North Carolina at Chapel Hill are all alternatives a local governing body can use in place of *Robert's.*

A governing body may also choose to adopt its own rules of procedure or bylaws instead of following *Robert's Rules of Order.* Adopting its own rules or procedure or bylaws allows the governing body to address issues that are of particular concern to the body and go beyond the general provisions in *Robert's*. Chesterfield County, Spotsylvania County and the City of Lynchburg have adopted their own rules of procedure. Lynchburg's rules of procedure were adopted in 2008 and replace *Robert's.* The City's rules of procedure went from over 600 pages to 20 and in addition to rules for the conduct of meetings the rules of procedure also address such issues as:

● citizen behavior during meetings
● decorum among the council members
● council will only discuss issues concerning the "services, policies or affairs of the city
● how a member of council places an item on an upcoming agenda
● how seating arrangements are decided
● the procedure for electing the mayor and vice-mayor
● appointments to boards and committees
● give the presiding officer the authority to call a recess if things become heated

From a parliamentary procedure standpoint City Council's meetings have become less complicated since Council abandoned *Robert's* and adopted its own rules of procedure. Council does use *Robert's* as a guide if issues come up that are not covered in Council's rules of procedure.

## PART IV-- DISCIPLINING A DISRUPTIVE MEMBER

If a private discussion and the use of the rules of parliamentary procedure have not been successful in dealing with a disruptive member of the governing body, the other members of a governing body may wish to consider the extreme step of taking some type of disciplinary action against the member who continues to engage in inappropriate conduct. A governing body gets its authority to discipline a disruptive member from a number of sources and has the authority to impose a variety of disciplinary measures on the member with the hope that the disciplinary action will convince the member not to behave in the same way again.

### A. Where does a Governing Body get its Authority to Discipline one of its Members?

#### 1. The Code of Virginia

Section 15.2-1400(D.) provides that "a governing body may punish or fine a member of the governing body for disorderly behavior.

**2. Special Authority**

Some localities may have provisions in their charters that authorize the members of a governing body to discipline an unruly member, for example:

Section 37 of the Lynchburg City Charter provides:

> The council shall have authority to adopt such rules and appoint such officers and clerks as it may deem proper for the regulation of its proceedings, and for the convenient transaction of business may compel the attendance of absent members, may punish its members for disorderly behavior, and by a vote of two-thirds of its members may expel a member for malfeasance or misfeasance in office.

Section 3.1 of the Waynesboro City Charter provides:

> The council may determine its own rules of procedure, may punish its own members for misconduct, and may compel attendance of members.

**3. Inherent Authority**

In the case of *Steven D.Whitener v. David McWatters, et al,* 112 F. 3d 740 (4th Circuit 1997) the Loudoun County Board of Supervisors disciplined one of its members for confronting other members of the board with profanity and abusive language (outside the course of a meeting). The disciplined member filed suit alleging that the board violated his rights by disciplining him. The courts dismissed the lawsuit holding that a legislative body's discipline of a misbehaving member was a core legislative act and the members of a governing body have the inherent right to discipline a member of the body that fails to follow the public body's rules or acts in an inappropriate manner.

**4. *Robert's Rules of Order***

*Robert's Rules of Order* has procedures to discipline members that engage in conduct that is injurious to the organization or its purposes. *Robert's*, Chapter XX, Disciplinary Procedures, §61, at page 643. If a local governing body has elected to follow *Robert's Rules of Order* it may wish to consider supplementing Robert's with "local" or "special" rules of procedure that deal with disciplinary measures. In effect, the local governing body would be adopting alternative rules of procedure that would parallel the disciplinary procedures in *Robert's*, essentially implementing the statutory authority given to the governing body in § 15.2-1400. Adopting its own disciplinary procedures would allow the members of the governing body to establish a process that allows them to discuss a disciplinary matter in the calmer atmosphere of the organizational meeting rather than in the heat of a confrontation.

**B. Holding a Closed Meeting to Discuss the Discipline of a Member**

There is a difference of opinion as to whether or not the members of a governing body can hold a closed meeting to discuss the discipline of a fellow member. Section 2.2-3711(A) (1) of the Virginia Freedom of Information Act allows a governing body to hold a closed meeting for the

"discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body…" The plain language of the section seems to allow a governing body to hold a closed meeting to discuss the performance and possible discipline of another member of the body. However, two opinions from the Attorney General's Office and an opinion from the Virginia Freedom of Information Advisory Council have created confusion and disagreement over this issue.

In one of the opinions the Attorney General concluded that a governing body could not to hold a closed meeting to discuss which of its members would be selected as the presiding officer. *1999 Opinions of the Attorney General at 15.* In the second opinion the Attorney General concluded the only employees of a locality the governing body could discuss in a closed meeting were the employees selected, employed and supervised by the public body itself. *2000 Opinions of the Attorney General at 19.* In a 2003 opinion the Virginia Freedom of Information Advisory Council advised that a school board could not meet in a closed meeting to discuss the performance or censure of an individual member of the board because Advisory Council assumed the members of the school board had no authority to exercise any discipline over a fellow member and concluded the board could not hold a closed meeting to discuss discipline it could not impose. *See, Va. FOI Advisory Council AO-17-03, July 7, 2003*.

The Attorney General's opinions ignore the very language of the FOIA itself which imposes no such limitations on a governing body's right to hold a closed meeting to discuss personnel matters. The opinion of the Freedom of Information Advisory Council assumed that the members of a public body lacked the authority to discipline a fellow member of the body. However, as discussed in <u>Part IV, A. Where does a Governing Body get its Authority to Discipline one of its Members</u>, of this outline the members of governing body have both express and inherent authority to discipline a fellow member of the body that engages in disorderly behavior. Therefore, it seem appropriate for a governing body to hold a closed meeting to discuss the possible discipline of a member of the body since it has the authority to impose such discipline.

I think it is safe to say that a majority of local government attorneys do not agree with the Attorney General's opinions and advise their local governing bodies they can hold closed meetings to discuss personnel matters involving employees that are not selected, employed and supervised by the public body itself. However, people will continue to disagree over this issue in the absence of an amendment to the FOIA or a decision from the Virginia Supreme Court. As discussed in <u>Part IV, D., 4. Fines</u>, of this outline, in 2009 the Portsmouth City Council held a closed meeting to discuss imposing a fine upon its mayor for engaging in abusive conduct toward a staff member.

**C. Does Disciplining a Member Violate the Member's First Amendment Rights**

When a member of a governing body is disciplined for engaging in disruptive behavior the member frequently files a §1983 lawsuit alleging that he or she is being retaliated against for exercising their First Amendment rights. In most instances the courts have not been very receptive to such arguments. The courts have tended to hold that while the First Amendment allows a member of a governing body to speak his mind, the First Amendment does not shield

the member from the consequences of his actions if he speaks or behaves in an inappropriate manner.

● Disciplining a member of the Loudoun County Board of Supervisions for confronting other board members with profanity and abusive language did not violate the First Amendment rights of the disciplined member. The members of a governing body have an inherent right to discipline a member who fails to follow the body's rules or acts in an inappropriate manner. *Steven D. Whitener v. David McWatters, et al,* 112 F. 3d 740 (4th Circuit 1997).

● A school board did not violate the First Amendment rights of it vice-president by removing him from is position for repeatedly attacking the integrity and competence of the school superintendent. While the school board member was entitled to speak his mind on an issue, the First Amendment did not protect him from the consequences of his inappropriate speech. *Blair v. Bethel School District*, 608 F. 3d 540 ($9^{th}$ Cir. 2010).

● A city councilman's First Amendment rights were not violated when he was censured for voting in favor of a hotel and casino project that was backed by his campaign manager. The U. S. Supreme Court held that the First Amendment has no application to voting by members of a legislative body. A legislator does not vote as an individual but as a political representative engaged in the legislative process. *Nevada Commission on Ethics v. Carrington*, <u>No. 10-568</u> (06/13/2011).

● The members of a public body did not violate the First Amendment rights of a fellow member by censuring her for violating its ethics policy and requesting that she refrain from such behavior in the future. *Phelan v. Laramie Community College Board of Trustees*, 235 F. 3d 1243 (10th Cir.).

The members of a governing body have the right to discipline a fellow member of the body that fails to follow the public body's rules or acts in an inappropriate manner. However, discipline should only be imposed for inappropriate behavior and not because the person is not a team player or expresses unpopular views.

**D. What Types of Discipline can be Imposed**

If the members of a governing body decide they wish to discipline a misbehaving member, a variety of different types of discipline are possible. Discipline is most often political, for example, denial of desired approvals, removal from choice committee appointments, paybacks of various kinds, a public censure, etc.

**<u>1. Censuring a Member</u>**

One of the most common forms of discipline is for the governing body to "censure" a wayward member. The censure of a member of a governing body is public statement condemning the member's inappropriate behavior with the hopes of reforming him or her so that he or she won't behave in the same way again. Members can be censured for misconduct at meetings, failing to follow proper procedures, violating confidentiality, moral misconduct, absenteeism, lying, disloyalty, working against the organization, conspiracy, and violating other values that the

governing body holds dear. Censure is one way for the other members of the governing body to avoid the appearance of agreement with the objectionable behavior of a fellow member. The presiding officer cannot censure a member of the governing body for misbehavior; only the body can do so. The presiding officer can also be censured for not following parliamentary rules in meetings, and for denying members their basic rights to make motions, participate in debate, and vote.

In the *Steven D.Whitener v. David McWatters, et al*, and the *Phelan v. Laramie Community College Board of Trustees*, cases which were previously discussed in this outline, the courts upheld decisions by the other members of governing bodies to censure members of the governing bodies that behaved in an inappropriate manner.

**2. Removal from Committees**

In *Steven D. Whitener v. David McWatters, et al,* the Loudoun County Board of Supervisors voted to discipline one of its members by removing him from his standing committee assignments as well as his assignments to outside committees and commissions for a period of one year for confronting other members of the board with profanity and abusive language. The court held that the other members of the governing body had the authority to remove the misbehaving member from such committees and commissions.

**3. Fines**

In 2009 the Portsmouth City Council used §15.2-1400 of the Virginia Code to fine its mayor $2,500 for engaging in "an extended pattern of abusive conduct involving a member of the City Clerk's office." The members of City Council, absent the mayor, met in a closed meeting to discuss the proposed discipline and subsequently presented the mayor with a letter fining him for his inappropriate behavior towards a staff member. In the disciplinary letter, the council members stated that the employee was asked to perform numerous personal chores for the mayor as part of her official duties, and when she did not perform the duties to his liking, the mayor treated her in an "insulting and demeaning" fashion. City Council did not adopt a formal resolution of discipline; it simply presented the mayor with the disciplinary letter.

In a letter that was leaked to the press the employee listed 44 personal chores she claimed Mayor Holley made her perform such tasks as labeling his socks, canceling his subscription to Playboy Magazine, placing internet orders for his stomach support t-shirts, calling stores looking for Gillette hair paste, scheduling repairs to the sprinkler system at the mayor’s home and finding a Taser on the internet for the mayor to use to scare geese away from his home.

If a governing body fines a member the collections procedures authorized by §58.1-3952 of the Virginia Code can be used to collect the fine if the member refuses to voluntarily pay it. The collection procedures could include withholding the member’s salary from the locality, levying on his bank accounts, garnishing his wages, etc.

**4. Removal from a Meeting**

Just as a member of the public can be removed from a meeting for inappropriate behavior, a member of the governing body can also be asked to leave for engaging in disruptive behavior. If a member of the governing body is asked to leave the meeting and refuses, the presiding officer can take the steps necessary to see that the request to leave is enforced. The presiding officer must carefully appraise the situation and act wisely in requesting that someone be removed from a meeting. The decision to remove someone from a meeting must not be motivated by a desire to silence the individual, anger or personal animosity, but a desire to maintain an orderly meeting.

In *Olasz v. Welsh*, 547 F. 3d 187 (3rd 10/14/08) on two separate occasions a council member engaged in disruptive behavior so the president had him removed from the meeting. As a result of his removal the council member filed a §1983 malicious prosecution action against the president. The court dismissed the action holding that it was not a violation of the council member's First Amendment rights for the president to have him removed from the meeting because his badgering and constant interruptions of the president disrupted the decorum of the meetings.

**5. Removal from Office**

If a member of a governing body behaves badly enough it is possible he or she could face the ultimate disciplinary action of removal from office. There are several ways in which a member of a governing body can be removed from office. In most situations the members of the governing body play a very limited role in efforts to remove a fellow member from office, the removal efforts are initiated by citizens. However, there are some situations in which the members of a governing body can initiate removal efforts.

***(a) Removal by the circuit court.*** Sections 24.2-230 through 24.2-237 of the Virginia Code establish a procedure by which a member of a local governing body who engages in certain types of misconduct can be removed from office. Under Section 24.2-233(1.) the voters can petition the circuit court to remove an elected official from office for "[n]eglect of duty, misuse of office, or incompetence in the performance of duties when that neglect of duty, misuse of office, or incompetence in the performance of duties has a material adverse effect upon the conduct of the office…."

The petition must be signed by a number of registered voters who reside within the jurisdiction of the officer equal to ten percent of the total number of votes cast at the last election for the office that the officer holds. Once a removal petition is filed with the circuit court the court issues a rule requiring the member of the governing body to appear and show cause why he should not be removed from office. *§ 24.2-234 of the Virginia Code*. The Commonwealth's Attorney represents the Commonwealth in the removal hearing. *§ 24.2-237 of the Virginia Code*. If the removal petition is dismissed the locality can be ordered by the court to pay the court costs and attorney's fees for the respondent. However, the persons that circulated or signed the removal petition cannot be assessed for any costs associated with the removal petition. *§ 24.2-238 of the Virginia Code*.

***(b) Special Charter provisions allowing removal***. Some localities have provisions in their charters that authorize the members of a governing body to remove a fellow member for malfeasance or misfeasance in office. For example:

Section 3.04.1 of the Richmond City Charter provides:

> In addition to being subject to the procedure set forth in §24.2-233 of the Code of Virginia, any member of the council may be removed by the council but only for malfeasance in office or neglect of duty. He/she shall be entitled to notice and hearing. It shall be the duty of the council, at the request of the person sought to be removed, to subpoena witnesses whose testimony would be pertinent to the matter in hand. From the decision of the council an appeal shall lie to the Circuit Court of the City of Richmond, Division 1.

Section 37 of the Lynchburg City Charter provides:

> The council shall have authority to adopt such rules and appoint such officers and clerks as it may deem proper for the regulation of its proceedings, and for the convenient transaction of business may compel the attendance of absent members, may punish its members for disorderly behavior, and by a vote of two-thirds of its members may expel a member for malfeasance or misfeasance in office.

Because removing a member of the governing body from office is such a significant event the member in question would have to be given *due process* - to be notified of the grounds for the proposed removal, given time to prepare a defense, and given the right to appear and defend himself or herself.

## PART V--SOME FINAL THOUGHTS

● Bad behavior by a member of a governing body has consequences. Such behavior can tarnish the image of the body as a whole, make it difficulty to transact business, can deter other members of the body from voicing their opinions, interfere with the council-manager form of government and hurt morale.

● Many localities experience disruptive members from time to time. Disruptive behavior may run the gamut from a member misbehaving at meetings, overstepping the boundaries of his office or behaving inappropriately to staff or citizens. If such behavior is not addressed it can escalate into something more serious.

● In dealing with a disruptive member, take issue with the member's behavior, not the member's motives. Sometimes a member's behavior or mistakes are a result of a misunderstanding, a lack of experience, or miscommunications.

● It is the responsibility of the members of the governing body, not staff, to decide how to deal with inappropriate behavior.

● "Come let us reason together" should be the first step in trying to deal with inappropriate behavior. A private discussion with the misbehaving member is less threatening and allows them to save face without embarrassing the person or the organization. This approach can even work in the middle of a meeting when tempers are running high. The presiding officer can suggest a recess to let members cool down.

●Parliamentary procedure can be a useful tool in trying to deal with disruptive behavior during meetings. It is often the absence of structure in a meeting rather than too much structure that allows demanding voices to try and fill the vacuum.

● The members of a governing body have the authority to impose of variety of disciplinary measures on a member of the body that misbehaves and in my opinion can hold a closed meeting to discuss the performance and discipline of a fellow member.

● Censuring a person or using other disciplinary procedures may not solve the problem and may even result in an escalation of the disruptive behavior.

● Dealing with difficult individuals is part of a public official's lot. When tensions flare and bring out the worst in people, remember it is not the end of the world. Take comfort in the old Persian proverb, "*This too shall pass*" and continue to work with the other members of your public body in a matter that preserves your integrity and promotes the well-being of your community.