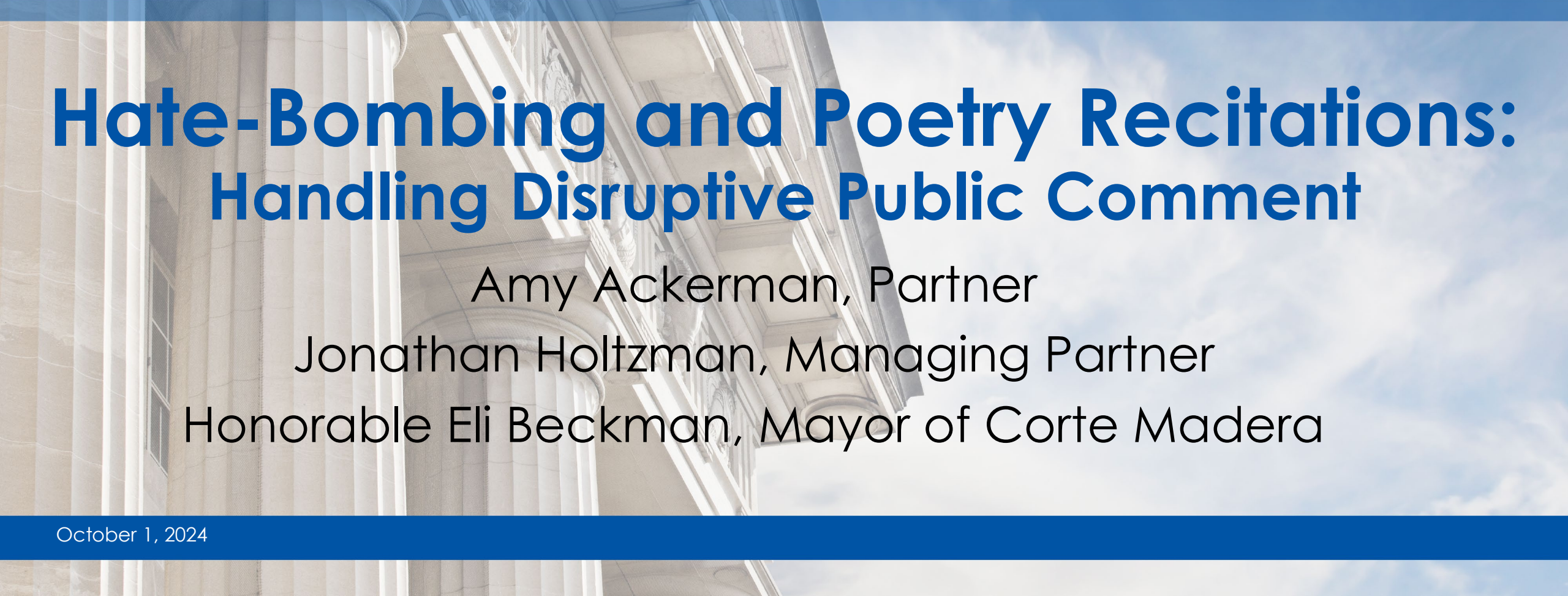


The logo for Renne Public Law Group (RPLG) features the letters "RPLG" in a bold, blue, serif font, enclosed within a white rectangular box. This box is centered at the top of the slide against a solid blue background.

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The background of the slide is a photograph of a classical building with tall, white columns and ornate architectural details. The image is slightly faded and serves as a backdrop for the text.

Hate-Bombing and Poetry Recitations: Handling Disruptive Public Comment

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Today's Presentation

- Legal Framework Affecting Public Comment
- Corte Madera case study
- Strategies for Handling Disruptions

The Brown Act Requirements

- Public comment before or during each item of business
- General public comment at regular meetings
- “A legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.”

(Gov. Code § 54954.3)

Committee Exception

If an item has been considered at a public meeting of a committee composed exclusively of members of the legislative body, the “parent” legislative body need not take public comment.

(Gov. Code § 54954.3(a).)

Reasonable Regulations

- Council may adopt “reasonable regulations”
- Including, but not limited to:
 - Limits on total time allotted for public comment
 - Limits for each individual speaker

(Gov. Code § 54954.3(b)(1).)

Removal of Disruptive Groups

Council may “clear” the room if the meeting is “willfully interrupted” by a group of persons so as to “render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting.”

(Gov. Code § 54957.9.)

Removal of Individuals

- Use of force or “true threat of force” – Council may remove a person without warning.
- Failure to comply with “reasonable and lawful regulations”
 - Warning Required - behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal.
 - Removal permitted IF person disrupts meeting:
Engages in behavior that “**actually** disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting”

(Gov. Code § 54957.95.)

USSC: City of Madison, Joint School Dist. v. Wisconsin Employment Relations Commission

- Teacher must be permitted to speak at public meeting of school board
- “[w]hatever its duties as an employer, when the board sits in public meetings to conduct public business and hear the views of citizens, it may not be required to discriminate between speakers on the basis of their employment, or the content of their speech.”

City of Madison, Stewart concurrence

“[A] public body that may make decisions in private has broad authority to structure the discussion of matters that it chooses to open to the public. Such a body surely is not prohibited from limiting discussion at public meetings to those subjects that it believes will be illuminated by the views of others and in trying to best serve its informational needs while rationing its time.”

White v. City of Norwalk

Upheld city ordinance that prohibited public speakers from making “personal, impertinent, slanderous or profane remarks to any member of the Council, staff or general public” and permitted the presiding officer, or a majority of the council, to remove a person who made such remarks, “or who utters loud, threatening, personal or abusive language, or engages in any other disorderly conduct which **disrupts, disturbs or otherwise impedes** the orderly conduct of any Council meeting.

White v. City of Norwalk

Council meetings are limited public forums BUT:

“[A] City Council meeting is still just that, a governmental process with a governmental purpose. The Council has an agenda to be addressed and dealt with. Public forum or not, the usual first amendment antipathy to content-oriented control of speech cannot be imported into the Council chambers intact.”

White v. City of Norwalk

“[T]he Council does not violate the first amendment when it restricts public speakers to the subject at hand. While a speaker may not be stopped from speaking because the moderator disagrees with the viewpoint he is expressing, it certainly may stop him if his speech becomes irrelevant or repetitious.

White v. City of Norwalk

Similarly, the nature of a Council meeting means that a speaker can become “disruptive” in ways that would not meet the test of actual breach of the peace, or of “fighting words” likely to provoke immediate combat. A speaker may disrupt a Council meeting by speaking too long, by being unduly repetitious, or by extended discussion of irrelevancies. The meeting is disrupted because the Council is prevented from accomplishing its business in a reasonably efficient manner. Indeed, such conduct may interfere with the rights of other speakers.

Kindt v. Santa Monica Rent Control Bd.

“Board regulations restricting public commentary to three minutes per item at the end of each meeting are the kind of reasonable time, place, and manner restrictions that preserve a board's legitimate interest in conducting efficient, orderly meetings.”

Norse v. City of Santa Cruz *(The Nazi salute case)*

- First Amendment rights extend throughout the meeting
- “Actual disruption means actual disruption.”

Remember Kozinski’s concurrence:

The video evidence “clearly shows that Norse's sieg heil was momentary and casual, **causing no disruption whatsoever**. It would have remained entirely unnoticed, had a city councilman not interrupted the proceedings to take umbrage and insist that Norse be cast out of the meeting.”

Acosta v. City of Costa Mesa

Ordinance making unlawful for members of the public to “engage in ‘disorderly, insolent, or disruptive behavior’” was facially overbroad because it did not require actual disturbances.

Project for Open Government v. County of San Diego – District Court

Board Rules:

- Defined “discriminatory or harassing remarks”
- Allow Chair to interrupt and admonish speaker:
 1. State County policy re discrimination and harassment
 2. State remarks in violation of County policy will not be condoned
 3. Inform speaker that language is unwarranted and interfere with other attendees’ ability to listen and understand.
- Chair holds speaker time, allows speaker to resume and if comments continue to disturb, disrupt, or impede the orderly conduct of the meeting, remove speaker

Other helpful cases

Dyer v. Atlanta Independent School System (11th Cir. 2021)
852 Fed. App'x. 397. (Unpublished)

Upholding school board's multiple suspensions of plaintiff from speaking at, and later attending school board meetings for use of "racially charged, derogatory epithets like the 'N-work,'" because that offensive speech was disruptive to the meeting.

Moms for Liberty v. Brevard Public Schools (N.D. Iowa 2022)
"[P]rohibiting abusive and obscene comments is not based on content or viewpoint, but rather is critical to prevent disruption, preserve 'reasonable decorum,' and facilitate an orderly meeting—which the Eleventh Circuit has held on multiple occasions is permissible."

Harassing Conduct

- California employers have a duty to take “all reasonable steps necessary to prevent discrimination and harassment from occurring” – including by third parties.
- Hostile work environment claims may be based on gender, race, or other protected characteristics.
- A council meeting is part of the work environment for city employees.

(Gov. Code § 12940(k).)

Corte Madera – Case Study

Mayor Eli Beckman



THE TOWN OF
CORTE MADERA
MARIN COUNTY CALIFORNIA



Evidence Shows -Hate Speech Disrupts Meetings

- Irrelevant to city business
- Distracts from city business
- Time consuming – prevents council from accomplishing its business in a reasonably efficient manner
- May subject city to hostile work environment claims
- Interferes with the First Amendment Rights of other attendees and speakers

Adopt and Implement Effective Rules

- Address conduct not speech
- Allow public criticism of policies, procedures, programs, services or acts or omissions of council officials, employees.
- Set reasonable time limits AND apply them uniformly

Adopt and Implement Effective Rules

- Establish Reasonable Conduct Standards
 - Use objective standards – Prohibiting
 - Use of Profanity/obscene gestures
 - Yelling/Disruptions/Disturbances
 - Interrupting speakers
 - Stomping Feet/whistling
 - Breaching Rules
 - Avoid subjective descriptors like “impertinent” and “insolent”
- Apply Rules in unbiased manner

Adopt and Implement Effective Rules

Include a warning and removal process:

- Stop speaker and hold time
- Explain the violation
- Explain why continued violation of the rules is disruptive
- Inform speaker they may continue if they refrain from violating rules
- Allow speaker the opportunity to continue comments
- If speaker continues to disrupt the meeting – mute/remove the disruption

Adopt and Implement Effective Rules

- Include city's discrimination and harassment-free workplace policy
- State that the policy applies at Council meetings
- Explain the reasons hate speech disrupts meetings.
- Follow the warning and removal process

Meeting Preparation

- Brief Council, staff, police on First Amendment requirements, warning, and removal procedures
- Train an effective presiding officer
 - Inform public of rules at start of the meeting
 - Apply rules evenhandedly
 - Consider the order of the agenda
 - Take in-person public comment before remote
 - Prepare for and respond to ad hominem attacks, rule violations
 - Keep calm demeanor
- Call a recess or end meeting if necessary

Conclusion





Q&A

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Thank you!

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