WHEN DISCOURSE FAILS

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City Clerk, Vallejo

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Senior Program Manager,
Institute for Local Government

Lisa Pope,
City Clerk, Vernon
AND INITIATIVES AND RECALLS ARE ON THE HORIZON

Civil Discourse
Recalls
Initiatives
INTRODUCTION

In the era of unprecedented election challenges, municipal clerks are obligated to exhaust all means of communication to maintain public trust. These efforts include encouraging civil discourse and facilitating access to timely and relevant information. In this session, attendees will learn how to productively engage internal and external stakeholders to lower the temperature in the room, as well as the technicalities of how to conduct a recall or initiative in a community when the temperature remains a little too hot to handle.
CIVIL DISCOURSE

SPEAK YOUR MIND
EVEN IF YOUR VOICE SHAKES.

RUTH BADER GINSBURG

[Image of Ruth Bader Ginsburg in profile with illustration of text quotes]
In a recent survey, more than 54% of local governments are experiencing an increase in incivility, divisiveness, misconduct & bad behavior in public meetings.
RECENT EVENTS HAVE AFFECTED HOW PEOPLE PERCEIVE GOVERNMENT.
INTERPERSONAL STRATEGIES
HOW TO LEAD WITH CIVILITY IN MIND

- Embrace diverse points of view
- Commit to civil discourse
- Practice active listening
- Disagree respectfully
- Separate the ‘people’ from the ‘problem’; never attack the people
- Prioritize relationships
- Focus on building trust
- Strive to find shared values & common ground
Change happens by listening and then starting a dialogue with the people who are doing something you don’t believe is right.

JANE GOODALL
COMMUNICATIONS TOOLS FOR BRIDGING THE DIVIDE

Be attentive

Ask clarifying questions

Let people know you are listening

Focus on interests, not positions

Identify options for mutual gain

Insist on using objective criteria
## OUR BEHAVIOR CAN SET THE TONE FOR CIVIL DISCOURSE

Be sure to encourage your leadership to...

<table>
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<tr>
<th>Action</th>
<th>Description</th>
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<tr>
<td>Respect and support <strong>good governance and engagement</strong> models</td>
<td>models that include members of the public in decision-making</td>
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<td>Promote and encourage <strong>public participation</strong></td>
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<td>Value <strong>public input</strong> as part of the decision-making process</td>
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<tr>
<td><strong>Show respect</strong> to staff, officials and the public; use affirming</td>
<td>words &amp; engaging body language</td>
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<tr>
<td><strong>Be informed</strong> about issues being discussed and come with an **open</td>
<td>mind</td>
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<td>**Demonstrate appreciation for <strong>varied opinions</strong></td>
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<td><strong>Behave in a civil manner and act with decorum</strong></td>
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ORGANIZATIONAL STRATEGIES
POLICIES TO CONSIDER

- Codes of Conduct
- Ethics Codes
- Civility Policies
- Group Norms
SAMPLE GROUP NORMS

- Work together, modeling teamwork and civility for our community
- Demonstrate honesty & integrity in every action
- Share information & avoid surprises
- Disagree agreeably & professionally
- Work for the common good, not personal interest
- Strive for win-win – work toward for consensus and seek common ground
- Honor “discussion” before “decisions” – reserve formal motions until initial discussions have taken place
STRATEGIES FOR PROMOTING CIVILITY IN PUBLIC MEETINGS

Establish process in advance

Manage expectations with the public by explaining opportunities to engage and the limitations of responses

Make sure your chair understands meeting process and options

Use scripts as appropriate

Take a break when things get heated. Ejection is a last resort

Explore public comment options
TIPS TO PROMOTE CIVILITY IN PUBLIC WORKSHOPS

- Be strategic about meeting design & facilitation.
- Establish facilitation & governance process in advance.
- Make sure staff and officials understand key roles & responsibilities.
- Rehearse and draft scripts for challenging topics & scenarios.
- Define conduct expectations and ground rules for all participants.
- Understand public comment options, timing, etc.
- Remember to consider language access.
GENERAL MEETING FACILITATION TIPS

| Manage expectations (e.g. explain process, meeting design and timelines) |
| Outline conduct expectations (e.g. appropriate vs. inappropriate behavior, consequences, etc.) |
| Formalize/codify ground rules for applause, heckling, etc. |
| Publicly clarify roles and responsibilities of staff vs. electeds |
| Assure people they will be allowed to speak; if appropriate, have staff available to meet offline with upset public member(s) |
| Offer multiple formats for comment (written, verbal, etc.) |
| Have a clearly defined and rehearsed/scripted plan for dealing with continued disruptive behavior up to and including removal if required. |
| Take breaks as needed to reset |
| **For Public Workshops:** Also consider using an outside facilitator |
## MANAGING PUBLIC COMMENT

### Tips

<table>
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<tr>
<th>Tip</th>
<th>Details</th>
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<tr>
<td>Set <strong>parameters</strong> for how officials engage during public comment</td>
<td>Understand in advance what they can and cannot say.</td>
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<td>Clearly define how public comment will be managed and state it at</td>
<td>The beginning of the meeting.</td>
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<td>the beginning of the meeting.</td>
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<tr>
<td>Publicly explain the <strong>transparency</strong> reasons for public comments,</td>
<td>Especially with regard to what can and cannot be responded to.</td>
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<tr>
<td>Be <strong>consistent</strong> with commenter speaking times and applause, etc.</td>
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<td>Allow groups to speak as one <strong>using a designated speaker</strong></td>
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<tr>
<td>Diffuse angry speakers using active listening techniques</td>
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WHAT IS THE DEFINITION OF ‘DISRUPTIVE BEHAVIOR?’

• Any meeting **willfully interrupted** by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible, thus preventing the body from being able to conduct agency business.

• When considering clearing the room, an important point to bear in mind is that mere disruption, including heckling, booing and applauding is **NOT** enough to clear the room. **The meeting must be disrupted by such conduct, AND the disruption must be so pervasive that removal of those creating the disruption is insufficient to regain order.**

City Attorneys Department, League of California Cities

David Fleishman, City Attorney, Pacific Grove
## CREATING YOUR ENFORCEMENT PLAN

<table>
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<tr>
<th>Plan ahead</th>
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<td>Make certain you understand the <strong>legal considerations</strong></td>
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<tr>
<td>Coordinate with your <strong>Attorney and Law Enforcement</strong></td>
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<tr>
<td>Clearly state <strong>consequence</strong> for non-compliance/enforcement</td>
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<tr>
<td><strong>Communicate and discuss</strong> the plan with the entire elected body</td>
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<tr>
<td>Communicate the adopted plan with staff</td>
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<tr>
<td>Clearly <strong>define the roles</strong> of staff vs. electeds vs. chair</td>
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<tr>
<td>Understand the role of Law Enforcement and <strong>how/when to engage them</strong></td>
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<tr>
<td><strong>Develop scripts</strong> in advance</td>
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## IMPLEMENTING YOUR ENFORCEMENT PLAN

**How your electeds or council can take action**

- Don’t be afraid to engage when the time comes, but use a scripted plan
- State and restate consequences for non-adherence to expected behavior
- Ejection is last resort; refer disruptor to on-site staff if appropriate
- Utilize Law Enforcement/Security to clear the room
- Remove the non-compliant member of the public (*temporarily* or *remainder of the meeting*)
- Take a break if needed
- Adjourn if all else fails
- Debrief with staff and law enforcement after the meeting

*Consistency is Key!*
RECALLS

California Elections Code Section 11000 et seq.

Method by which voters can remove an elected official from office
2021 Recall Election

Get ready to vote September 14, 2021

What's on the ballot?
There will be two questions to vote on:

1. Do you want to recall the governor?
2. If the governor is recalled, who do you want to replace him?

If more than 50% of voters say “no” to the first question, the governor remains in office. If more than 50% of voters say “yes” to the first question, the person who gets the most votes on the second question becomes the governor.
RECALLS – General Provisions

Who    Proponents initiate recall process
       Elections Code (EC) 11000 et seq.

What   Power of the Voters to remove an elective officer
       California Constitution, Article II, Sections 13-19

When   After serving 90 days and not in the last six months of term
       EC 11007

Why    No specific grounds are required
RECALLS – Statistics

- In 2021 - 545 recall efforts in the US
- School Board Members (237) followed by Council Members (155)
- 131 officials in California
RECALLS – PROCESS

Notice of Intention
- Serve, file and publish or post notice
- Officer sought to be recalled may file 200 word answer

Recall Petition
- Prepare, receive approval, circulate and submit

Petition Examination
- Elections Official verifies signatures

Answer of Recallee
- Voters decide whether or not to recall and choose successor

Election
- Voters decide whether or not to recall and choose successor
NOTICE OF INTENTION

- Prepare notice in compliance with California law - EC 11020
- Serve officer sought to be recalled and file with Elections Official - EC 11021
- Publish in newspaper - EC 11022
- Cost born by proponent
ANSWER OF RECALLEE

- Officer sought to be recalled may file answer - EC 11023
- No more than 200 words
- Serve a copy on proponents

The grounds asserted for recall aren’t true! I stand on my public record. I urge you to view the Council meetings on the City’s website and see my record for yourself.
PETITION

- Prepare petition in compliance with State law (SOS format) - EC 11040 - 11043.5
- Receive approval from Elections Official - EC 11042(d)
- Determine signature requirement - EC 11221
- Circulate petition
- Filing Deadline - EC 11220
- Examination by Elections Official - EC 11222
RECALLS - ELECTION

- Governing body calls election - EC 11240
- If body fails to act, County elections official orders election EC 11241
- Election held between 88-125 days from date of order EC 11242
- Recall Election Ballot - EC 11320 et seq.
RECALLS - ELECTION

- Vote Yes or No on recall - EC 11323
- Nomination of candidate to succeed recalled officer - EC 11381
- Majority required for recall - EC 11384
- Candidate receiving highest votes fills the unexpired term - EC 11385
- Election cost is born by City
INITIATIVES
MUNICIPAL INITIATIVES (EC 9200)

Stages of Petition Process

- Inquiry
- Preparation
- Circulation
- Submittal
- Verification
- Certification

Municipal Initiatives

**Initiative** - A proposed ordinance submitted to the legislative body by citizens’ petition submitted to the elections official of the legislative body.

**Charter Amendment** - A proposed measure to add, amend or repeal provisions of the charter initiated by citizens’ petition submitted to the elections official of the legislative body.
INITIATIVES – STARTS WITH

File Notice of Intention to be accompanied by: (EC 9202):

1. Written text of initiative
2. Written statement not to exceed 500 words setting forth reasons of proposed petition.
3. Signed by at least 1 but not more than 3 proponents.
4. Acknowledgement of Proponents (EC 18650)
5. Filing fee established by legislative body not to exceed $200
### INITIATIVES – BALLOT TITLE & SUMMARY

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<th>Description</th>
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<tr>
<td>Elections Official</td>
<td>immediately delivers Notice to City Attorney (EC 9203 &amp; 9204)</td>
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<td>15 days for City Attorney to prepare and return Ballot Title &amp; Summary (500 words or less)</td>
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<td>• Summary known as “Impartial Statement” and describes the purpose of the measure.</td>
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<tr>
<td>Elections Official</td>
<td>to deliver copy of Title and Summary to Proponents</td>
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Prior to circulation of the petition, Proponents shall (*EC 9205 & 9206*)

Publish Notice of Intention, Ballot Title and Summary of the Proposed Measure (does not have to include the text of the proposed measure)

File proof of publication with Elections Official (*EC 9206*)

Ensure provisions of EC 9206 are met
Proponents may begin circulation after publication or posting of title and summary prepared by City Attorney

No review required of the petition before circulation

Must be filed within 180 days from date of receipt of title and summary from Elections Official

Petition may be circulated in sections

Each section must comply fully with the Code (EC 100, 101, 9201, 9203, 9204, 9207 & 9209)
RECEIPT OF PETITIONS

All sections must be filed at one time with Elections Official during normal business hours (EC 9208)

Elections Official shall accept petitions for prima facie check to determine sufficient number of signatures..... (EC 9210 & 9215)

- 10% of the voters of the city of last report of registration by the county elections official to SOS at time notice was published!
RECEIPT OF PETITIONS – DAWN’S BEST PRACTICES

BE PREPARED!

If you consolidate your election, talk with your Registrar of Voters ahead of time to determine:

• How to address omissions & signers outside of jurisdiction
• What to do if Affidavit of Circulator is missing or incomplete.
• What to do with written requests for signature withdrawal from the petition.
• Transition arrangements to ROV for signature verification
RECEIPT OF PETITIONS – DAWN’S BEST PRACTICES

Encourage proponents to get on your calendar to file petitions so you are ready to go!

Remind proponents all sections of petition must be filed at same time.

Ask proponents to arrange petition sections together in batches by total number of signatures. Makes your job easier for prima facie count!
RECEIPT OF PETITIONS – DAWN’S BEST PRACTICES

Have your forms ready ahead of time:

- Receipt for Petition
- Raw signature count (petition tally sheet)
- Certificates of Acceptance or Insufficiency ready to issue following prima facie count

Obtain latest report to SOS re # of registered voters on publication date of the notice of intention (EC 9210)

Practice process with staff/deputize staff assisting with the Prima Facie count
RECEIPT OF PETITIONS – DAWN’S BEST PRACTICES

Pick the room and have it ready

Allow proponents and media to view process

Take your time with prima facie count

Give proponent a copy of GC Section 84305 (Mass Mailing Regulations)

Review to ensure petition conforms with EC 100, 104, 107, 9203, 9207 9209, 9022) – talk with your City Attorney if in doubt!
Two Options based on Prima Facie Check:

1. **File petition** if signatures equals or is in excess of the minimum number of signatures required; or

2. **Rejected** - no further action if number of signatures does not equal or exceed minimum number of signatures required.

3. If the petition is not accepted for filing, shall be returned to the proponents.
CHECKING SIGNATURES & CERTIFICATION

ROV has 30 working days to determine validity of signatures.

You have options for the signature verification process: (1) check all signatures on the petition; or (2) do a random sampling of 3% or 500 signatures, whichever is greater (EC 9211, 9114 & 9115).

Based on the outcome of the random selection, this may add an additional 30 working days to the process.
Elections Official to certify to City Council at the next regular meeting.

The City Council may do one of the following:

1. Adopt the ordinance without alteration at regular meeting when certification is presented or within 10 days after presented.

2. Submit the ordinance, without changes, to the voters pursuant to EC 1405.

3. Order a report on its effect on municipal operations pursuant to EC 9212 & 9215)
Ordinances generally take effect ten days following the day the City Council adopts the resolution declaring the results of the election.

The exception is if the ordinance specifies the effective date (may also be called “operative” or “enactment” date).

Charter amendments do not take effect until accepted and filed by Secretary of State...remember to file with County Recorder!
RETENTION OF PETITIONS (EC 17200)

Signatures on petitions are NOT subject to review by the public with exception of the Proponents

Petitions retained for 8 months

- After certification of the results of the election or
- After final examination if not submitted to the voters.
KEY TO YOUR SUCCESS!

- Planning and Good Communications!
- Calendar, Calendar, and double check your calendar!
- Consult with your City Attorney throughout this process!
- Know where to find your resources - Do your Homework!
- Never give legal advice
RESOURCES

ILG RESOURCES

ILG L&G Resources:
- Customized Workshops & Trainings
- Sample Codes of Conduct & Civility Policies
- Good Governance Checklist

ILG Public Engagement Resources:
- TIERS Public Engagement Framework and Training
- Preparing for Successful Public Meetings: Checklist for Before, During and After
- Increasing Outreach – Language Access, Partnering with CBOs, and more

Find out more - www.ca-ilg.org

RECALL RESOURCES

- Procedures for Recalling State and Local Officials
  Prepared by the Office of the Secretary of State - Revised 2020
- Los Angeles County - 2022 A Guide to Recall
- California Fair Political Practices Commission Frequently Asked Questions: Recall Elections
- California Elections Code
- City Attorney

INITIATIVE RESOURCES

- California Secretary of state – How to Qualify An Initiative & Recall Process at the Local Level
  www.sos.ca.gov
- Your County Registrar of Voters - Solano County’s Procedures for County, Municipal & District Initiatives & Recall Guide as an example
  https://www.solanocounty.com/depts/rov/how_to.asp
- MCA Direct – California Municipal Election Handbook for California City Clerks
  https://www.mcadirect.org/municipal-elections
THANK YOU!

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