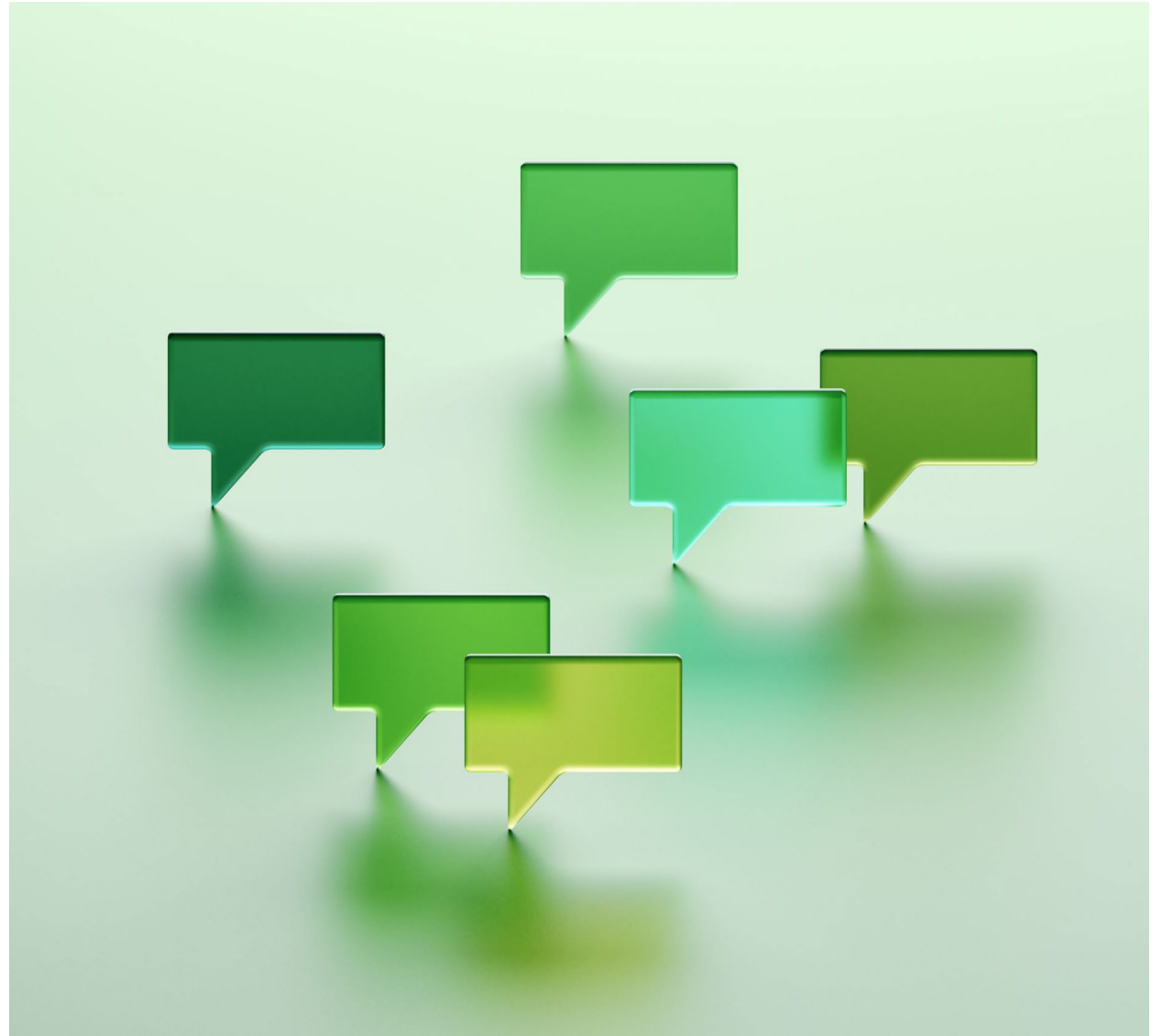

When Public Comment Crosses the Line

John M. Funk

City Attorney ~ Downey, CA

April 24, 2025



They Said
WHAT?



Cities all over have seen a surge of public comment that by any reasonable standard is shocking and offensive, both by “zoom bomb” and in person.



The comments are not merely critical of policies, procedures, or councilmembers, or sprinkled with occasional profanity.



Rather, the comments are rageful venomous, racist, misogynistic, abusive, and sexist, including liberal use of the “N” and “F” words, LGBTQ+ slurs, racial epithets, and religious bigotry.

Limits on Conventional Responses

Brown Act Warning for disruption and then removal

- The longtime standard is “actual disruption”: this is not often the case with offensive language alone

Warning and removal for violation of body’s Rules of Decorum

- This likely raises First Amendment issues because it typically is aimed at the content of speech

Violation of Penal Code Section 403 for willfully disturbing public meeting

- This is a high standard to meet and the D.A. may not be willing to prosecute



What about the First Amendment?

General Rule: Speech by citizens at local government meetings **is protected** by the First Amendment

But, when a reasonable person believes they will be subjected to physical violence, **there is no protection**

First Amendment: Often Sought as a Cover

Public speakers engaging in offensive speech will often cite the First Amendment as a blanket protection

It may be tempting to believe, but it is not always a complete shield, especially when their words are delivered in such a manner to instill fear for one's personal safety

Workplace Violence Restraining Order

If speech may be construed as a credible threat of violence, a workplace violence restraining order may be sought under state law



A credible threat of violence is defined as “a knowing and willful statement or course of conduct that would place a reasonable person in fear for their safety, or the safety of their immediate family, and that serves no legitimate purpose.”

Additional Grounds for WVRO: Harassment

Effective January 1, 2025, a WVRO may also be sought for harassment

This is a lower standard than a threat of violence

Harassment is a course of conduct that seriously alarms, annoys, or harasses a person, and that serves no legitimate purpose; it also must cause substantial emotional distress

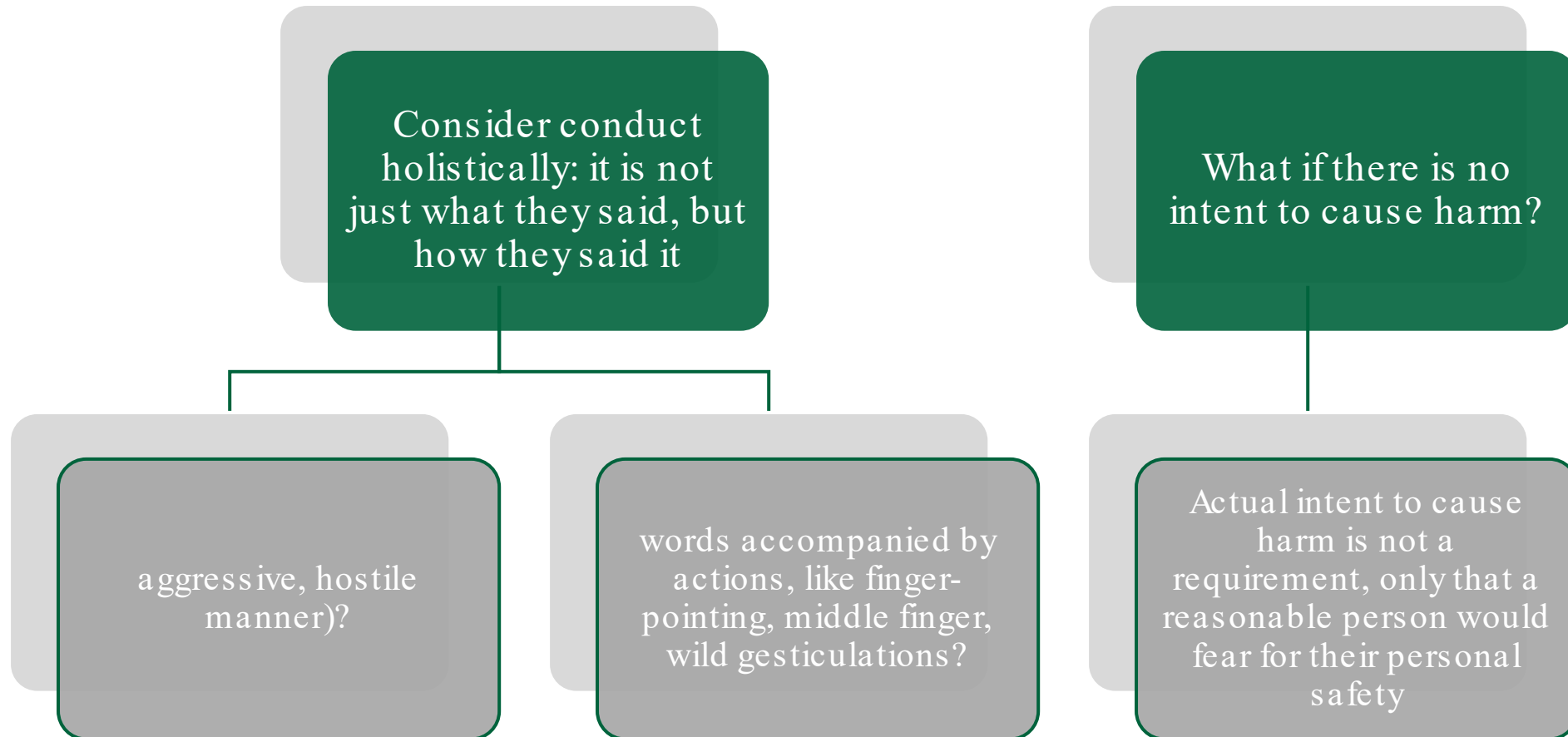
Effect of WVRO

An individual found to have threatened violence or causing harassment is prohibited from attending meetings for up to 3 years (subject to renewal)



Individuals protected under the WVRO would be councilmembers

Does the Speaker's Conduct Meet Either Standard?



Should You Pursue a WVRO?

YES, IF PUBLIC COMMENT EXCEEDS THE BOUNDS OF
THE FIRST AMENDMENT AND WARNINGS HAVE NOT
WORKED OR DETERRED CONDUCT



IT CAN BE AN IMPORTANT FIGHT TO TAKE A
STAND AGAINST THIS TYPE OF BEHAVIOR

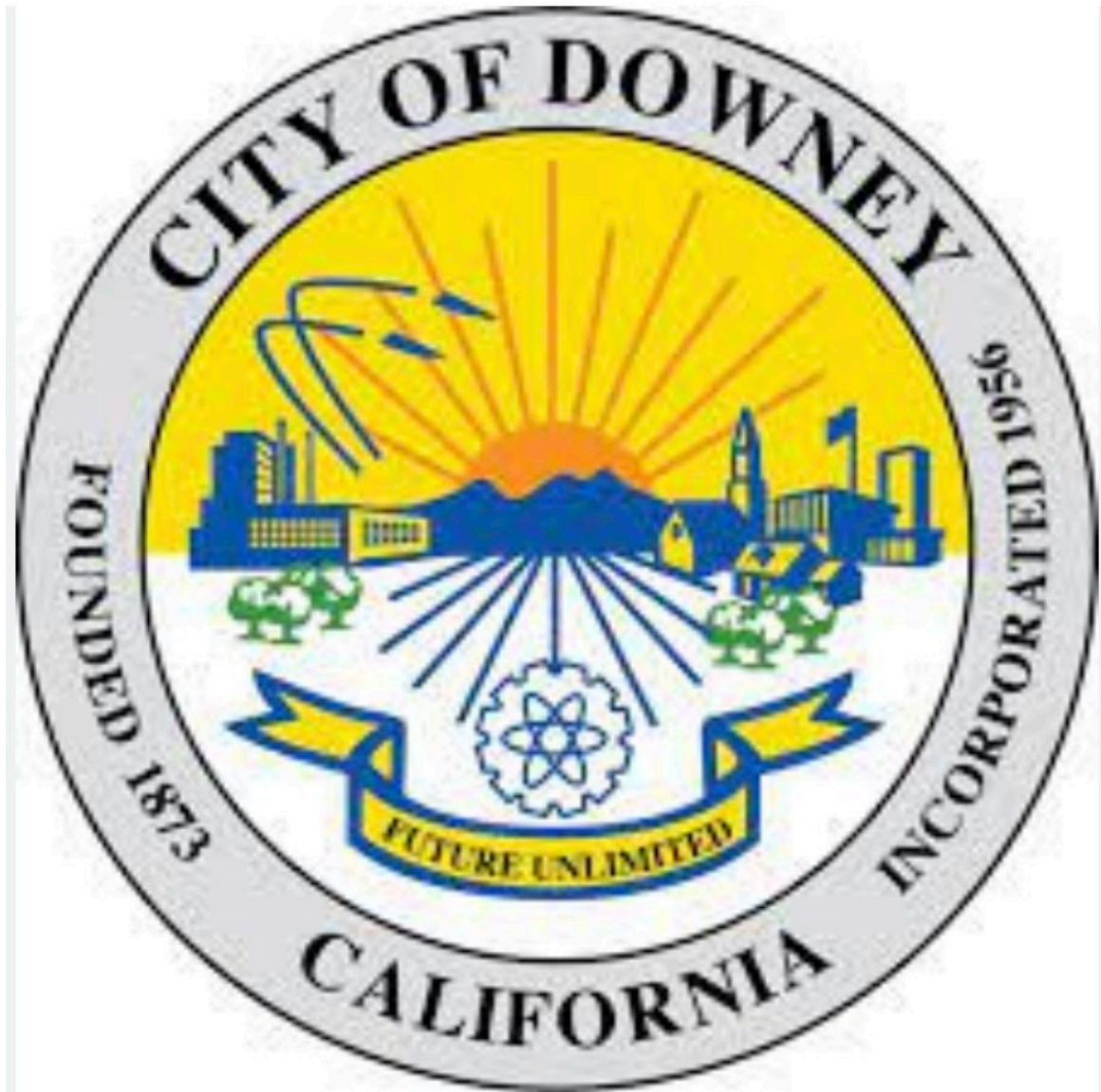
Additional Considerations

The judge may not see it your way

Losing could make matters worse by emboldening individuals

But, it puts people on notice that the City will not tolerate certain behavior and is unafraid to take action

City of Downey's Experience



Thank you!

Questions

