

Hate Speech in the
Council Chambers:

The First Amendment vs.
The Freedom of Civility

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<https://abc7news.com/walnut-creek-city-council-public-comment-antisemitic-comments-member-kevin-wilk/13420122/>

Panelists

Tygarjas Bigstyck, City of Pacifica Councilmember

- Tygar is the former Mayor of Pacifica. He spent his time on council focused on raising the quality of civil discourse in his community.

Kevin Wilk, City of Walnut Creek Councilmember

- Kevin was first elected to the city of Walnut Creek in 2016, just elected to his 3rd term, and served as Mayor in 2021. He has been a leading voice in fighting hate and antisemitism in the SF Bay Area, and is a founding member of the Bay Area Network of Jewish Officials (aka BANJO).

Bill Ayub, City of Ventura, City Manager

- Bill was appointed City Manager in 2023, after serving more than 37 years in law enforcement. He served as sergeant-at-arms for various elected bodies in multiple jurisdictions throughout his career in law enforcement.

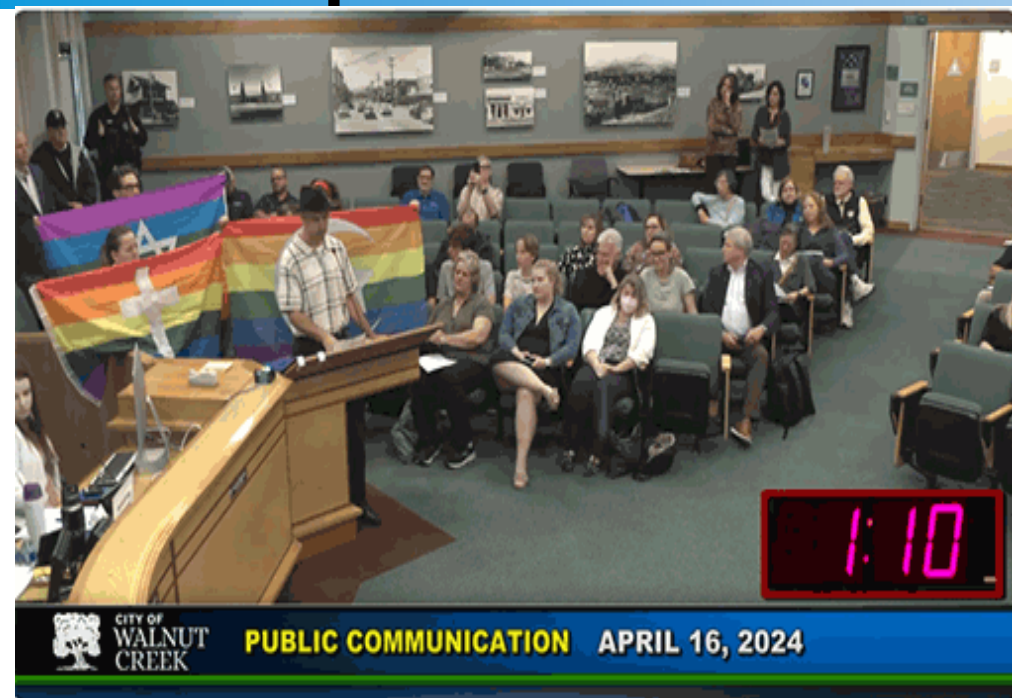
Denise Bazzano, Partner Burke, Williams, Sorensen, LLP

-Denise serves as Assistant City Attorney in four cities in the greater bay area and regularly provides advice to her clients about the First Amendment and the Brown Act.

Agenda

- Disruption in the Chamber-Real World Experiences
- First Amendment
- Brown Act
- Balancing Free Speech Rights with the Conduct of the Meeting
- Tips from the Trenches
- Audience Questions

Disruption in the Chamber



<https://www.youtube.com/watch?v=OO2v-G9IUFo> (1:18:30)

First Amendment:

Constitutional Right to Speak

- Council meetings are considered a limited public forum set aside by government for expressive activities.
- Even though Council can reasonably regulate the *time, place, and manner* of speech during a public meeting, the ability to regulate content is significantly limited by the protections of the First Amendment.
- Regulations on speech must be *fairly applied without regard to viewpoint of speaker* (content neutral).
- Council may not censor speech by prohibiting citizens from speaking, even if their speech is, or may be, defamatory.

First Amendment: Unprotected Speech

There are limited and narrowly construed exceptions to the First Amendment's general protection on speech at Council meetings including:

- Making *threats that lead* (or are likely to lead) directly to *imminent lawless action*; *inciting violence*; or
- Using *fighting words* that are likely to provoke immediate combat.

Brown Act: Right to Participate

- Agendas must provide an opportunity for the public to directly address the legislative body on:
 - items on the agenda; and
 - any item not on the agenda *within the legislative body's subject matter jurisdiction* (general public comment).
- Legislative body may adopt *reasonable regulations* on public comment.
- Legislative body may *not* prohibit criticism.

Brown Act: Disruptions

Recent amendments to the Brown Act (SB 1100) give legislative bodies authority to remove individuals who disrupt a meeting.

“Disrupting” includes:

- Failure or refusal to comply with reasonable and lawful regulations adopted by the legislative body; or

- Engaging in behavior that constitutes use of force or a true threat of force; or

- “True threat of force” means a threat that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.

(Government Code section 54957.95)

Balancing Free Speech Rights with Civility in Meetings

- An attendee using force or making credible threats of force may be removed immediately. No warning is required under the Brown Act prior to removal.
- An attendee can be removed for *disruptive conduct* that goes beyond First Amendment-protected speech.
 - The behavior must be “disruptive” -Recognize the difference between offensive speech and actual meeting disruption (*swearing, hate speech and negative comments about Councilmembers, staff, etc., may not be considered “disruptive”*).
- If there is a disruption, Brown Act requires that legislative body provide warning before removing any person from meeting for disruptive conduct.

Balancing Free Speech Rights with Civility in Meetings

An attendee can be required to comply with reasonable rules for participation:

- Time limits for speaking;
- Staying within the parameters of the agenda item or if speaking during general public comment, only speaking on topics within the subject matter jurisdiction of the legislative body (very broad); and
- Speaking during public comment period.

Tips from the Trenches

- Adopt and implement Rules ahead of time
- Establish Recommended Conduct Standards
 - Include request that all speakers be respectful and tolerant
 - Include city's discrimination and harassment-free workplace policy
- Apply rules consistently
- Read Statement about the Rules/Conduct Standard at each Council meeting
- When disruptions occur, provide warning and removal process.
- Don't be afraid to take a recess.

Tips from the Trenches-Zoom Bombing/In-Person Hate Speech

- Have system in place to alert Mayor/Staff of potential zoom bombing speakers.
- Be specific about how much time each speaker will get and number of speakers that will provide comment via zoom.
- If Mayor is going to give verbal warning, make sure he has language available to remind speakers.
- Is this a Disruption in the Chambers?
- Is this a Hostile Work Environment?



Questions?

