

THE AGC UPDATE

a special report on legal developments

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SLANDEROUS SPEECH AT PUBLIC MEETINGS & THE LEGAL REMEDIES AVAILABLE

In California, the Ralph M. Brown Act requires that the public be allowed to address a public body on any item of interest within the body's subject matter jurisdiction. But how far can public comments at a meeting go before the speech actually becomes slander of a public official? And what are a public official's legal remedies for slander at a meeting? This special **AGC Update** answers these important questions.

Local Regulation of Speech at Meetings

Under the Brown Act, the public must be allowed to speak on an agenda item before or during the public body's consideration of that agenda item.¹ However, cities have the **absolute right** to set rules for public comment.² For instance, a public body may stop a speaker if his or her speech is "irrelevant or repetitious," or if the speaker is disrupting the meeting.³ In addition, a public body may exclude or expel all persons from a meeting where a disturbance has been created which will not allow the meeting to continue unimpeded. In such an event, the members of the public body may order the meeting room cleared (with the exception of journalists) and continue in session.⁴

Although the Brown Act allows the public the right to address the body, the Act does **not** protect speakers who make defamatory statements.⁵ Nor does the First Amendment protect slanderous statements: there is **no First Amendment right** to voice personal, virulent attacks against city officials during public comment at a city council meeting.⁶

Accordingly, it is appropriate and permissible for a public body to adopt rules prohibiting speakers from making false statements of fact that are harmful to another's reputation. However, though such rules can prohibit slanderous speech against city officials, a city council cannot prohibit public criticism of *the city or the legislative body itself*.⁷

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Slander of a Public Official (Private Cause of Action)

Although making slanderous statements may be prohibited at city council meetings, it is **very difficult** for a public official to successfully sue for slander. When a public official takes office, the law considers that he or she must expect that public debates “will sometimes be rough and personal.”⁸ In order for a public official to successfully sue for slander, the public official must show that the speaker made the statement:

- (1) with knowledge that the statement is false; or
- (2) with a reckless disregard of whether the statement was false.⁹

For example, a city council member sued a group of speakers who, at a city council meeting, characterized the member’s negotiations with the city officials as “blackmail.” The U.S. Supreme Court held that the speakers did not honestly believe that the council member had committed a crime.¹⁰ Rather, the court found that use of the word was **just an opinion**, and rejected the council member’s lawsuit.

In a California case, a public official sued a reporter who stated that the official “was a crook and a crooked politician.” The court noted the circumstances surrounding the comment, including the fact that the comment was made at a council meeting, where the audience expects speakers to try to persuade others of their position.¹¹ Based on such context, the comments were found to be just an opinion, and **not** slander, as the comments were “broad, unfocused and wholly subjective.”¹²

Thus, although public comments can be highly offensive, upsetting, and disrespectful, whether a court will find them to be slanderous depends heavily on the speaker’s intent, and whether the comments were made to persuade the audience or cause a reaction. Although such comments may qualify as “defamatory” due to the untruth or reckless disregard for the truth, due to the high threshold courts set for public officials, suits for slander against public speakers often will not prevail.¹³

Injunction and Criminal Prosecution

Though a private lawsuit for slander may not be successful, other remedies are available for the disturbances at public meetings. For example, a city may seek an injunction to prevent offensive speakers from appearing before public meetings in violation of Penal Code Section 403 (prohibiting disruptions of public meetings). In order to prevail, however, a city would need to show a **likelihood of future harm**. This is a very high hurdle, since a speaker will undoubtedly claim that the laws alone act as such a prohibition and there is no evidence of such likelihood in the future. Accordingly, instead of bringing such injunction alone as a cause of action, the city would be more successful if an injunction was part of a criminal prosecution.

Persons disturbing a public meeting are guilty of a **misdemeanor** under the California Penal Code.¹⁴ Such disruptions are also prohibited under the Government Code.¹⁵ In order to successfully prosecute an individual under the Penal Code, the prosecution would need to show that the individual had in fact substantially impaired the conduct of the meeting by intentionally



committing acts in violation of implicit customs or explicit rules for governance of the meeting.¹⁶ It would also need to be shown that such individual knew or should have known that such rules existed and the behavior was disruptive.¹⁷ Such a prosecution would be handled by the District Attorney's office.

Any civil action by a city against public speakers could be considered an "SLAPP" suit (i.e., a "Strategic Lawsuit Against Public Participation") pursuant to California's Anti-SLAPP statute.¹⁸ SLAPP suits are occasionally filed by entities alleging defamation against citizen groups who speak out against them. Those entities bringing SLAPP suits usually do not intend to win their suits; rather, they file the lawsuit solely for delay, distraction, and to punish activists for exercising their constitutional right to speak.¹⁹ Thus, in bringing a civil action for defamation or slander, cities and public officials should be careful to ensure that their claims are legitimate and will not be characterized under the Anti-SLAPP statute.

Of course, even if a city's lawsuit for slander or defamation is stricken under the Anti-SLAPP statute, such result would not prevent a city from bringing a misdemeanor complaint against a disruptive public speaker, since the Anti-SLAPP statute **does not apply** to a criminal enforcement action.²⁰ Thus, there are a variety of options available to address inappropriate or defamatory comments, and care should be taken to select the appropriate legal remedy.

Further Information

As a law firm committed to its public sector clients, **Alvarez-Glasman & Colvin** actively follows any and all issues regarding the Brown Act and First Amendment Speech issues. For more information on any of the topics addressed in this update, please contact **Andrew L. Jared** or **David King** at **(562) 699-5500**.

Legal Authorities:

- 1 Cal. Gov. Code § 54954.3(a).
- 2 *White v. Norwalk* (9th Cir. 1990) 900 F.2d 1421, 1425; *Jones v. Heyman* (1989) 888 F.2d 1328, 1333.
- 3 *Rowe v. City of Cocoa* (11th Cir. 2004) 358 F.3d 800, 802; *Felton v. Griffin* (9th Cir. 2006) 185 Fed. Appx. 700.
- 4 Gov't Code § 54957.9.
- 5 *Id.* at § 54954.3(c) ("The 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. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.")
- 6 *Thornton v. City of Kirkwood* (E.D. Mo. 2008) 2008 U.S. Dist. 6062 at 14 (citizen, during public comment at public hearing, stated that the city's government was corrupt, that the city council members and the mayor had "jackass-like qualities," and that the Mayor was "sitting there looking stupid."); see also *Good Government Group, Inc. v. Superior Court* (1978) 22 Cal.3d 672, 677 (article written claiming council members had "extorted by blackmail"); *Ashcroft v. Free Speech Coal* (2002) 535 U.S. 234, 245-46 ("The freedom of speech has its limits; it does not embrace certain categories of speech, including defamation, incitement, obscenity...").
- 7 Gov't Code § 54954.3(c).
- 8 *Harte-Hanks Communications, Inc. v. Connaughton* (1989) 491 U.S. 657, 684.
- 9 *Good Government Group, Inc.*, note 6, *supra*
- 10 *Greenbelt Cooperative Pub. Ass'n v. Bresler* (1970) 398 U.S. 6.
- 11 *Fletcher v. San Jose Mercury News* (1989) 216 Cal.App.3d 172.
- 12 *Id.* at 191.
- 13 *Id.*; *Greenbelt Cooperative Pub. Ass'n* (1970) 398 U.S. 6, 18.
- 14 Penal Code § 403.
- 15 Gov't Code § 36813.
- 16 *In re Kay* (1970) 1 Cal.3d 930.
- 17 *Id.*
- 18 Code of Civ. Proc. § 425.16.
- 19 *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 815; *People v. Health Laboratories* (2001) 87 Cal. App. 4th 442, 446.
- 20 Code of Civ. Proc. § 425.16(d).