



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
PUBLIC INTEGRITY DIVISION

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The Honorable Members of the Council
Inglewood City Council
One Manchester Blvd.
Inglewood, CA 90301

Re: Alleged Violations of Brown Act
Case No. P13-0230

Dear Honorable Members of the Council,

Our office received complaints of violations of the Brown Act by the Inglewood City Council affecting the right of members of the public to make comments at City Council meetings. We reviewed recordings of City Council meetings on August 27, 2013 and September 24, 2013, and observed that Mayor Jim Butts interrupted a member of the public who was making public comments and then ordered that person to be excluded from the meetings. As explained below, we conclude that the actions at both meetings violated the Brown Act. We hope that our explanation will assist the Council to better understand the permissible scope of regulating public comments and ensure that the Council does not repeat these violations.

At the City Council meeting on August 27, 2013, Joseph Teixeira, a member of the public, spoke during the time scheduled for open comments. He began by requesting that the Council remove Mayor Butts as council chair based on allegations that Mayor Butts misled and lied to the public through the Inglewood Today newspaper which is published by Willie Brown, an associate of Mayor Butts. Mayor Butts interrupted Mr. Teixeira several times to rebut the accusations. Mr. Teixeira responded by calling Mayor Butts a liar. At that time, Mayor Butts interrupted again and declared that Mr. Teixeira was "done" making comments. When Mr. Teixeira asked why, Mayor Butts replied that Mr. Teixeira was going to stop calling people names. Mayor Butts instructed a uniformed officer to escort Mr. Teixeira out of the meeting. A few minutes later, after comments were received from other members of the public, Mayor Butts made additional comments to rebut Mr. Teixeira's allegations. Mayor Butts added that he had allowed Mr. Teixeira to call him a liar at almost every City Council meeting recently, but asserted that Mr. Teixeira does not have the right to call people liars at City Council meetings. Mayor Butts then declared, "I'm not going to let anyone, from this point on, yell at the Council, yell at people in this room, call people names. That's not an exercise of free speech. That's just not going to happen anymore."

At the City Council meeting on September 24, 2013, Mr. Teixeira spoke during the time scheduled for public comments regarding agenda items. He represented that his comments were in objection to the warrant register payment to the Inglewood Today newspaper, an item which was listed on the agenda. He opposed the Council using Inglewood tax dollars to pay Inglewood Today to assist them in their bids for re-election by regularly praising them and hiding their mistakes, misconduct and serious problems in the city. As specific examples, he asserted that Inglewood Today had never reported on apparently well known allegations of past misconduct, including violating civil rights of citizens, by Mayor Butts while he was the Santa Monica Chief of Police. Mayor Butts then cut off Mr. Teixeira stating that the comments were not properly related to the warrant register agenda item and that Mr. Teixeira would have to come back at the end to continue his comments during the open comments period. Mr. Teixeira responded that he was speaking about the warrant register, but Mayor Butts declared that he was "done." Mr. Teixeira responded that he would talk about the warrant register and Mayor Butts warned him that he would be "done" if he said one more word about anything other than what was listed on the agenda. Mr. Teixeira then resumed his comments by asserting that Willie Brown had not reported important stories to the people of the community. At that point, Mayor Butts cut off Mr. Teixeira and declared that he was "done." He then instructed a uniformed officer to escort Mr. Teixeira out and added that he could come back at the end when open comments would be received. Indeed, Mr. Teixeira resumed his critical remarks later in the meeting during the open comments period.

The Brown Act protects the public's right to address local legislative bodies, such as a city council, on specific items on meeting agendas as well as any topic in the subject matter jurisdiction of the body. The Act permits a body to make reasonable regulations on time, place and manner of public comments. Accordingly, a body may hold separate periods for public comments relating to agenda items and for open comments. Also, a "legislative body may exclude all persons who willfully cause a disruption of a meeting so that it cannot be conducted in an orderly fashion." (*The Brown Act, Open Meetings for Local Legislative Bodies* (2003) California Attorney General's Office p. 28.; Gov. Code § 54957.9.) But exclusion of a person is justified only after an *actual* disruption and not based on a mere anticipation of one. (*Acosta v. City of Costa Mesa* (2013) 718 F.3d 800, 811; *Norse v. City of Santa Cruz* (2010) 629 F.3d 966, 976.) A speaker might disrupt a meeting "by speaking too long, by being unduly repetitious, or by extended discussion of irrelevancies." (*White v. City of Norwalk* (1990) 900 F.2d 1421, 1426; *Kindt v. Santa Monica Rent Control Board* (1995) 67 F.3d 266, 270.) However, "personal, impertinent, profane, insolent or slanderous remarks" are not per se actually disruptive. Exclusion for such speech is not justified unless the speech actually caused disruption of the meeting. (*Acosta, supra*, 718 F.3d at 813.) Furthermore, a "legislative body shall not prohibit a member of the public from criticizing the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body." (*The Brown Act, Open Meetings for Local Legislative Bodies, supra*, at 28.; Gov. Code § 54954.3(c).)

The question of when particular conduct reaches the threshold of actual disruption to justify excluding a member of the public "involves a great deal of discretion" by the

moderator of the meeting. (*White, supra*, 900 F.2d at 1426.) Nonetheless, a moderator may not “rule[] speech out of order simply because he disagrees with it, or because it employs words he does not like.” (*Id.*) Conduct which courts have found amounted to actual disruption includes yelling and trying to speak out of turn during a meeting. (*Kindt, supra*, 67 F.3d at 271.) Actual disruption was also found when a member of the public incited the audience to stand in support of his stated position and approximately 20 to 30 people stood up in response and some started clapping. Additional disruption was found when the inciting member resisted attempts by officers to escort him out of the meeting. (*Acosta, supra*, 718 F.3d at 808-809.) Actual disruption, however, can not be based on the reaction of a member of a legislative body who is criticized or verbally attacked. (*Norse, supra*, 629 F.3d at 979 (CJ Kozinski concurring.))

Applying the case law above to the conduct captured in the recordings, we find that Mr. Teixeira did not cause any actual disruption at either meeting at issue. Thus, excluding him from each meeting was unlawful. In the August 27, 2013 meeting, it is clear that Mayor Butts cut off Mr. Teixeira’s comments in response to Mr. Teixeira calling Mayor Butts a liar. Mayor Butts even explained to Mr. Teixeira that he was going to stop calling people names. Mayor Butts’ additional commentary to the audience after he had Mr. Teixeira escorted out of the meeting confirms his purpose to not allow members of the public to yell or call people names at meetings. Mayor Butts’ declaration that the conduct he was curtailing was “not an exercise of free speech” is incorrect. As cited above, personal remarks such as name calling is protected by the Brown Act and First Amendment and is not in and of itself a justification for cutting off a speaker or having the person removed. Mr. Teixeira’s words did not cause a disruptive reaction from the audience or otherwise impede the proceedings. And, while it is true that Mr. Teixeira raised his voice during his emotional comments, we do not believe that it is accurate to describe him as yelling during his comments. Regardless, justification for interrupting and excluding a member of the public does not hinge on when a raised voice reaches a certain level. Rather, the actions are justified only to address an actual disruption. Mr. Teixeira did not cause any disruption at this meeting. Therefore, it was unlawful to cut short his comments and exclude him from the meeting.

Likewise, Mr. Teixeira did not cause any disruption at the meeting on September 24, 2013. On this occasion, Mayor Butts based his actions on the view that Mr. Teixeira’s comments had veered off course and were no longer relevant to the specific agenda item involving the warrant register to pay Inglewood Today. We disagree. Mr. Teixeira’s comments remained relevant to the specific warrant register. The basis of his objection to the warrant register was his assertion that the newspaper repeatedly failed to report on alleged misconduct by Mayor Butts. To support his assertion, Mr. Teixeira offered multiple examples of such alleged misconduct. Citing such examples had the additional effect of criticizing Mayor Butts which is a topic reserved for the open comments period later in the meeting. However, the additional effect did not strip the comments of their relevance to the initial issue of the warrant register. Exceeding the standard time allotted for speakers might amount to a disruption, but Mr. Teixeira’s time was cut short. Furthermore, his comments did not incite a disruptive reaction from the audience. Again, it was unlawful to cut off Mr. Teixeira’s comments and have him excluded.

It must also be noted that even if Mr. Teixeira's comments had strayed off topic, exclusion was still unjustified. The appropriate response would have been to interrupt the comments and instruct Mr. Teixeira to leave the podium and be seated. Nothing of his conduct was disruptive. When he was told that he could no longer speak at that time, even though unlawfully, and that he must wait until the open comment period, he did not persist in his comments. Nor did he resist the officer who escorted him out of the meeting.

Finally, interruptions of Mr. Teixeira's comments by Mayor Butts at the August 27, 2013 meeting raise another concern regarding a speaker's allotted time for making comments. Legislative bodies may limit the time each speaker is allotted and it appears that the Inglewood City Council does. But caution must be taken by the Council that interruptions by its members do not cut short the allotted time. Mayor Butts interrupted several times to rebut accusations made by Mr. Teixeira. Because Mr. Teixeira's comments were cut short by unlawfully removing him, it remains unclear whether or not the interruptions by Mayor Butts would have affected the time limit. It is understandable that members of the Council might not want to leave accusations unanswered. But it must be ensured that such interruptions by members do not take away from the time allotted any individual speaker. The Council has the prerogative to set its procedures, but one way of protecting the allotted time would be to reserve responses by members of the Council until after an individual's public comments or after the general period for public comments.

We hope that our explanation will assist your understanding of permissible action under to the Brown Act and expect that from this point forward you will fully respect the rights of any member of the public to lawfully address the Council. Please feel free to contact us if you have any questions.

Truly yours,

JACKIE LACEY
District Attorney

By 

BJORN DODD
Deputy District Attorney

cc: Cal Saunders