



# The Importance of Decorum

Civility keeps communities involved in government

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There is a sense that politics have become especially nasty in recent years, but politics has always been rough and tumble. For example, the distance between the front benches in the House of Commons is two sword lengths plus a foot. Early sergeants at arms maintained order with the mace that was kept in front of the presiding officer for everyone to see.

## Model decorum

The risk management manual that the MEL just distributed to all municipalities includes a model decorum ordinance.

The lack of civility discourages people from becoming involved in government and leads to lawsuits. In one case, an ugly hearing on a zoning matter was a major factor in the town losing a lawsuit that cost \$7.5 million. The court wrote that:

“Bare animus towards a group or fear, unsubstantiated by factors which are properly cognizable in zoning proceedings, may constitute sufficient evidence for a zoning ordinance to fail under an equal protection challenge.”

The public needs to understand that if the meeting starts to focus on things that are discriminatory, the final decision could be made by the courts and not by the town.

## Maintaining Decorum

- **The most critical thing a Mayor, School Board President, or other presiding officer must do is to establish the protocols at the reorganization meeting and consistently enforce these rules.** Back in the 70s and 80s, it was sufficient to use Roberts Rules of Order. Today, you should adopt a resolution or ordinance with some basic guidelines on decorum. Wyckoff just became the first municipality to adopt the new model developed by the MEL. The model is also on the MEL's website (<https://meljif.org>).

- **Consistent enforcement is critical.** You cannot call your opponents out of order for things that your supporters are allowed to get away with.

- **Establish reasonable time limits for speakers** at both hearings and the open portion of the meeting.

- **Establish a meeting curfew** so that the meeting automatically ends at a certain hour unless the bylaws are suspended. That requires a two-thirds vote. Both Council Members and the public become more distinct when they know that the meeting is about to automatically end.

- **Avoid getting into a debate with the public.** If the presiding officer gets into an argument from the dais, the meeting will quickly get out of hand. You are not obligated to answer or respond to any questions. Defer questions that require follow-up to the manager, attorney or committee chairs, and depending on the circumstances you can offer to answer questions after the meeting.

- **When you are presiding, be careful of your body language.** It is best to maintain eye contact with the speaker and avoid comments or expressions that appear to be judgmental. Try to appear as neutral as possible. One expression that will help calm a discussion is “This is a situation where reasonable people can come to different conclusions with the same facts.” You can also remind everyone that whatever they say will be permanently on the record and cannot be redacted.

- **Do not attempt to shout down a speaker.** That only escalates the situation. When things are getting out of hand, call for a short recess. This motion is privileged and proceeds without debate. Often cooler heads will prevail and you can regain control of a without having to take more formal action. You should always call a recess before asking the police to talk to someone who is violating the rules of decorum.



## Meeting management

Public bodies can balance the rights of speakers and preserve decorum by following basic principles of meeting management. In 1989, the U.S. Court of Appeals in *White v Norwalk, California* upheld an ordinance that provided that:

“Each person who addresses the Council shall not make personal, imper-  
tinent, slanderous or profane remarks.”

The Court also held in *White* that:

“In dealing with agenda items, the Council does not violate the first amendment when it restricts speakers to the subject at hand....

While a speaker may not be stopped from speaking because the moderator disagrees with the viewpoint the speaker is expressing, it certainly may stop him if his speech becomes irrelevant or repetitious.”

The key to understanding the *White*

decision is that local government cannot regulate speech per se, but under some circumstances can regulate conduct that impedes the process of government.


In 2010, the New Jersey Supreme Court applied this principle in *Besler v BOE of West Windsor-Plainsboro*:

“A public body may control its proceedings in a content-neutral manor by stopping a speaker who is disruptive or who fails to keep to the subject matter on the agenda. The government or a school board, however, has the burden of showing that its restriction of speech in a public forum was done in a constitutionally permissible purpose.”

In this case, a parent complained that a coach used profanity with a girls’ basketball team. When the parent didn’t receive what he considered to be a satisfactory response, he filed suit. For eight consecutive meetings, he spoke

about the case and criticized the coach personally. Finally, the board president read a statement that speakers should not attack individuals, talk about pending litigation, or otherwise repeat themselves. A few minutes later when the parent was recognized, he again returned to the same argument and was cut off by the President. He sued and a jury agreed with the speaker and awarded damages. The board appealed.

The New Jersey Supreme Court ruled that this was a jury question and that the burden of proof was on the board to show that its actions were reasonable. The court held that because the board established its decorum rules just before this speaker was to be recognized, a reasonable juror could conclude that the board was singling out this particular speaker.

The fact that New Jersey places the burden of proof on local government makes it more difficult to deal with decorum issues, but not impossible. 



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