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Say what and when? It varies by council, school board

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Murray



Pattakos



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When it comes to city council and school board meetings, they can choose whether they have a section for the public to address them during public comments. There is no overall law cities must follow.

The Cleveland Jewish News asked lawyers and city council members about public comments and what public entities can decide.

J. Michael Murray, managing partner at Berkman Gordan Murray & DeVan in Cleveland, and Peter Pattakos, civil rights attorney at Pattakos Law Firm LLC in Fairlawn spoke to the CJN, while Alec Isaacson, Beachwood City Council president, Nancy Meany, vice mayor for the city of Solon, and Michele Weiss, vice mayor for the city of University Heights, wrote to the CJN about the regulations and rules that each of their city council's follow regarding public comments.

“Every city council and every school board promulgate their own rules as to how to conduct their meetings,” Murray said. “And included in those rules, usually, is a portion of the meeting and the guidelines and procedures that apply when citizens want to publicly comment in the course of those meetings.”

For the cities of Beachwood, Solon and University Heights, each has a five-minute rule for speakers, but the total time allotted differs by city. For Beachwood, there is an “absolute limit of 30 minutes” which council adopted in its rules of procedures in 2020, Isaacson said. For Solon, there is “no time limit,” Meany said. For University Heights, there is a 15-minute section, but the “vice mayor can decide to elongate the 15 minutes,” Weiss said.

No governmental body is required to allow public comments, but by doing so it shows accountability to the voters and shows that the elected officials care about “what your constituents want” and that they care about “being responsive to the will of the voters that elected you,” Pattakos said.

“I would be suspicious of any elected official or any governing body that was not open to public comment,” Pattakos said. “And I think as a matter of good practice for democracy in America, where again speech is essential, that is it un-American to not allow public comment.”

When it comes to public meetings, it comes back to what kind of forum is occurring, Murray said. The different types of forum are traditional public forum, designated public forum and limited public forum, he said.

Generally, school board and city council meetings are considered limited public forums where it is limited to groups and people who want to talk about “certain subject matters,” Murray said.

“They can restrict the speech so long as it doesn’t discriminate on the basis of viewpoint and so long as it’s reasonable in light of the purpose served by the forum,” he said.

If it is a public forum, such as a street or sidewalk, where the government has the “least power” to censor speech, then the First Amendment applies in “full scope,” Murray said.

A designated public forum is a public property that the state has opened up for use by the public for express activity, he said. In this, people can not pick and choose based on content what they allow.

“The board president and council president seem to have plenty of discretion to shut down public comments if they want to because these provisions are very vague and board,” Murray said.

With presidents or vice mayors, they can decide to stop public comments, but this runs into the violation of the First Amendment, Murray said. This is something that the city of Cleveland is dealing with and an issue the city of Beachwood had in September 2023.

At the Sept. 25 Cleveland City Council meeting, Chris Martin’s microphone was cut off by council president Blaine Griffin, as he read aloud campaign contributions made to council members by a political action committee that Griffin controls, [Cleveland.com](https://www.clevelandjewishnews.com) reported. Griffin filed a lawsuit in December over the incident and council struck a “temporary truce” in the lawsuit.

Along with the lawsuit, the city of Cleveland is reconsidering its public comments portion, which started after nearly a century of none being allowed on Oct. 4, 2021, due to the calls for a ceasefire in the Israel-Hamas war and criticism of Cleveland Mayor Justin Bibb’s support of Israel that have

persisted in public comments at council meetings since Israel launched a ground invasion in Gaza following the Oct. 7 Hamas surprise attacks on Israel, CJN previously reported. Cleveland only allows 10 registered speakers per meeting.

At a Sept. 18 Beachwood City Council meeting, Howard Darvin, who was running for council at the time, was denied the opportunity to speak after two Beachwood City Council members criticized him over public comments he made at prior meetings, the CJN previously reported. Before Darvin's mic was turned off, Isaacson had asked him to step away, saying the 30-minute time limit had elapsed. The CJN reviewed a recorded video of the meeting which showed that 26 minutes of the 30 minutes were used when Darvin attempted to speak.

"Based on Dr. Darvin's and my council colleagues' demeanors, I felt that ending citizens' remarks to maintain order was in the best interests of all concerned," Isaacson wrote the CJN following the meeting.

Prior to that meeting, Isaacson would ask others in attendance if they wanted to speak before closing citizen's remarks, but now is following councils rules of procedures to only allow those who signed in before the meeting to speak, he said.

"After that happened, I decided to more strictly follow the rules of procedure (including section 7.3 which requires people to sign in) and to no longer exercise the discretionary power granted in section 7.2," Isaacson wrote. "Council does have the right to override that decision by a simple majority vote which they can take at any time, including during citizen's remarks."

Council's rules of procedure Rule 7.2 says: "In total, the citizen's remarks portion of the meeting shall continue no longer than thirty (30) minutes unless so extended at the discretion of the president or a majority of council"

Although council or boards cannot restrict a certain viewpoint, they are allowed to regulate speech and only allow comments for certain subjects, which are called time, place or manner restrictions, Pattakos said. With this, they can regulate the time that each person gets or decide when they decide to have the public comments portion, he said.

It does not matter what rules there are as long as they are "reasonable" and "enforced consistently," he said.

For University Heights, according to Chapter 200.11, comments from the audience come before reports and agenda items.

In Solon, at the beginning of the agenda there is a section for comments regarding agenda items and at the end of the agenda, there is a section for comments from the audience regarding any item, Meany said.

Beachwood council rules section 1.8 requires public comments to be heard before council votes on legislation, Isaacson said.

“What is prohibited is viewpoint-based discrimination when the government targets not the subject matter, but particular views taken by the speakers on a subject,” Pattakos said once the forum is open for speech.

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