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## **Public Meetings v. Meetings of the Public**

- Under the Right to Know law annual meetings are meetings of the legislative body that are open to the public, but not meetings of the “public”.
- Registered voters in attendance comprise the legislative body, and, subject to the rules established by the meeting, have the right to speak.
- The “public” – i.e., those who are not registered voters, may speak only at the pleasure of the meeting.

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## Out of Order Speakers & Disruptive Attendees

- Under the U.S. Constitution and New Hampshire law, persons who actively disrupt a public meeting and/or refuse to follow reasonable meeting rules may lose their right to attend the meeting. (I.e., be ordered to leave.)
  
- If the order to leave is made by a law enforcement officer, then further refusal may lead to criminal charges. See RSA 644:2 (Disorderly Conduct).

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## Out of Order Speakers & Disruptive Attendees

- **40:7 Debate.** – No person shall speak in any meeting
  - without leave of the moderator,
  - nor when any person speaking is in order;
  - and all persons shall be silent at the desire of the moderator,
  - on pain of forfeiting \$1 for each offense, for the use of the town.

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## Out of Order Speakers & Disruptive Attendees

- **40:8 Disorder.** – If any person shall behave in a disorderly manner, and,
- after notice from the moderator, persist in such behavior, or
  - shall in any way disturb the meeting, or
  - willfully **violate any rule** of proceeding,
- the moderator may command any constable or police officer, or any legal voter of the town,
- to remove such disorderly person from the meeting and detain such person until the business is finished.

## Out of Order Speakers & Disruptive Attendees

- **40:9 Duty of Police.** – Every constable or police officer
- shall obey the orders and commands of the moderator for the preservation of order,
  - and may command such assistance as is necessary;
  - and if any constable or police officer neglects to perform any of the duties imposed by this or RSA 39 such constable or police officer shall forfeit \$40 for the use of the town.

## **Out of Order Speakers & Disruptive Attendees**

- Under **RSA 644:2** (part of the New Hampshire Criminal Code) a person is guilty of disorderly conduct if:
  - III. He purposefully causes a breach of the peace, **public inconvenience, annoyance** or alarm, or recklessly creates a risk thereof, by:
    - (b) Disrupting the orderly conduct of business in any public government facility.
    - (c) Disrupting any lawful assembly or meeting of persons without lawful authority.
  - VI. Disorderly conduct is a misdemeanor if the offense continues after a request by any person to desist; otherwise, it is a violation.

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## **Out of Order Speakers & Disruptive Attendees**

- State v. Dominic, 117 N.H. 573 (1977). Selectboard member can be criminally prosecuted for disorderly conduct after ignoring chair's rulings and continually interrupting meeting.
- In State v. Comely, 130 N.H. 688 (1988), upheld disorderly conduct conviction of protester who caused 90 second delay of opening of NH gubernatorial inauguration.
- State v. Jeffrey Clay, Case No. 2018-0184 (2019, N.H. S.Ct., unpublished order), affirmed convictions for disorderly conduct and resisting detention after repeated refusal to comply with select board's public comment rules.
- Baer v. Leach, (2015, U.S. Dist. Ct., Dist. N.H.). Police officer did not violate rights of individual arrested and charged with disorderly conduct after being warned three times to cease interrupting meeting. (Note the state court had dismissed the disorderly conduct charge.)

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## **Out of Order Speakers & Disruptive Attendees**

- Disruptions must be actual, not constructive, technical or anticipatory (i.e., a perception comments could cause a disruption after the fact).
- Examples of actual disruptions:
  - Refusal to stay on article under discussion;
  - Speaking without being recognized by the Chair; and
  - Shouting and yelling while others are speaking;
  - Repeatedly moving in a manner that interferes with others ability to see or hear the proceedings.

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## **Out of Order Speakers & Disruptive Attendees**

- Symbolic and/or passive “speech” that is neither disruptive nor violative of other laws (electioneering) is protected by the First Amendment.
- Passive/symbolic speech examples:
  - eye rolling;
  - stray or minor utterances;
  - symbolic gestures;
  - tee shirts with provocative messages.
- Signs, or other symbolic speech may be disruptive depending on how they are held, displayed, etc.

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## Out of Order Speakers & Disruptive Attendees

### PROCEED CAREFULLY

- Keeping in mind the substantial personal right we have to free speech, and the public has to attend open meetings, a decision to remove a person from a meeting should be taken and carried out with due care.
- Meet with officer or Chief before the meeting;
  - Discuss meeting rules;
  - Discuss cues and steps before invoking removal power.

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## Out of Order Speakers & Disruptive Attendees

- Steps to take before removal:
  - Provide paper copies of meeting rules;
  - Summarize the rules at start of the meeting;
  - Apply the rules equally, with only minor variance;
  - **Strike 1:** Provide clear warnings and instructions (not mere polite requests) before taking formal action;
  - **Strike 2:** If disruption persists, call a recess and try to talk with the person – preferably with officer assistance;
  - **Strike 3:** Provide at least one last chance after alerting officer;
  - **Clearly** order the person to leave, and ask officer's assistance to effect that order. **Officer must see the disruption, preferably after strike 2 recess.**

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**William Phillips**

*Director of Policy Services & Staff Attorney*

[wphillips@nhsba.org](mailto:wphillips@nhsba.org)

NHSBA  
25 Triangle Park Drive, Suite 101  
Concord, NH 03301  
(603) 228-2061



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