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Reference Guide for Local Government Public Comment Periods

Kristina Wilson

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Kristina Wilson is an assistant professor of public law and government at the UNC Chapel Hill School of Government. Her areas of expertise include local government structure and authority, First Amendment law, board procedures, and public records and transparency issues.

In North Carolina, boards of county commissioners, city councils, and local school boards are required to hold at least one public comment period each month during a regular meeting. Public comment periods serve as a critical part of the governance process. They allow local governments[1] to understand the public's concerns and perspectives while affording the public an opportunity to impact local government decision-making. In facilitating a public comment period, local governments must comply with the appropriate statutory requirements and constitutional limitations. However, following statutory and constitutional requirements does not mean that a local government must permit *all* speech in a public comment period. In fact, doing so might be counterproductive to valuable public conversation. This bulletin aims to help local governments understand the relevant legal protections and limitations so they can conduct meaningful and lawful public comment periods.

Sections I, II, and III define what constitutes a required public comment period and describe the accompanying statutory directives. Sections IV and V explain the constitutional principles that apply to public comment periods. Section VI concludes with practical considerations for local governments.

I. What Is a Public Comment Period in the Local Government Context?

The North Carolina General Statutes provide local governments with two main methods for receiving public feedback: public hearings and public comment periods. Various statutes require local governments to hold public hearings for certain subject matters or actions. For example, city councils and boards of county commissioners must hold legislative hearings before adopting, amending, or repealing land use or development regulations.[2] The purpose of public hearings is to receive public feedback on the specific matter or action identified in the controlling statute. As a result, comments should pertain to the subject of the hearing and not to unrelated matters.[3] In contrast, public comment periods allow a much broader range of commentary on local government business.[4] Instead of focusing on just one proposed action or topic, public comment periods exist to promote general public conversation on matters that fall within the local government's jurisdiction.[5]

1. In this bulletin, the term "local governments" means boards of county commissioners, city councils, and local school boards because these entities are required to hold a monthly public comment period.

2. Chapter 160D, Section 601(a) of the North Carolina General Statutes (hereinafter G.S.). *See also* Fleming Bell, *Statutorily Required Public Comment Periods: What Are They and How Do They Work?*, Coates' Canons: NC Loc. Gov't L. Blog (May 20, 2010), https://canons.sog.unc.edu/blog/2010/05/20/statutorily-required-public-comment-periods-what-are-they-and-how-do-they-work/.

3. Bell, *supra* note 2.

4. *Id.*

5. *Id.* Local governments may, however, adopt rules limiting the content of public comment, as discussed in this bulletin.

II. Who Is Required to Hold a Public Comment Period?

The statutes require city councils, boards of county commissioners, and local school boards to hold public comment periods.[6] The three governing statutes—virtually identical—require each of these entities to have at least one public comment period at a regular meeting each month.[7] These bodies are not, however, required to hold a meeting solely to conduct a public comment period. Thus, if a regular meeting is not scheduled in a particular month, the board is not required to schedule a meeting just to hold the public comment period. Similarly, if a meeting is scheduled but then later cancelled—or the meeting is unable to proceed for lack of a quorum[8]—no additional meeting needs to be scheduled to fulfill the public comment period requirement. Taking these statutory requirements together, for each of these entities, if only one regular meeting is scheduled per month, that meeting *must* include a public comment period. If more than one regular meeting is scheduled in a month, only one of those meetings must include a public comment period.

III. How Can Local Governments Manage Public Comment?

All three of these statutes authorize the governing boards of cities, counties, and school districts to adopt certain rules for public comment periods. The statutes allow "reasonable rules governing the conduct of public comment period, including, but not limited to,"

- fixing a maximum amount of time for each speaker;
- assigning spokespeople;
- selecting delegates when there is insufficient space to accommodate all attendees; and
- providing for order and decorum.[9]

Local governing boards are expressly authorized to adopt rules that fall within each of the enumerated categories, but the statutory list is illustrative rather than exhaustive. The statutes' only explicit limitation is that public comment rules be "reasonable" and relate to the "conduct" of the public comment period. No cases have interpreted reasonableness under these statutes, so it is difficult to know how courts would evaluate public comment period rules falling outside the enumerated categories.

As discussed later in Sections IV and V, federal courts have defined "reasonableness" in the First Amendment context to require that restrictions on speech in a limited public forum serve a legitimate government objective in light of the forum's purpose.[10] Using that definition as a guide, "reasonable" public comment period rules may be those that support the underlying purpose of the public comment period. The statutes' enumerated categories of permissible rules demonstrate a policy interest in protecting the public's right to speak while balancing a board's

6. G.S. 160A-81.1 (cities); 153A-52.1 (counties); 115C-51 (local school boards).
7. *Id.*
8. A quorum is the number of board members required for the board to take action. *See, e.g.*, G.S. 160A-74 (quorum for city councils); 153A-43 (quorum for boards of county commissioners).
9. G.S. 160A-81.1 (cities); 153A-52.1 (counties); 115C-51 (local school boards).
10. *See, e.g.*, Minn. Voters Alliance v. Mansky, 585 U.S. 1, 13–15 (2018).

need for efficiency and order at its meetings. Any adopted rules that do not fall easily within the enumerated categories should support a similar objective. The following subsections analyze the enumerated categories of permissible rules for public comment periods.

A. Time Limits

All three public comment period statutes permit "fixing the maximum time allotted to each speaker."[11] This category seems to authorize a variety of time-limit rules, including fixing a maximum amount of time for each individual speaker or for the public comment period as a whole. The statutes do not provide guidance on the amount of time local governments may assign and do not indicate any minimum time limits. Based on the statutes' plain language, a wide range of time limits could be legal. However, to ensure that time-limit rules serve the underlying purpose of the public comment period, local governments should craft rules that allow the public an adequate opportunity to participate and be heard.

Rules that merely limit the number of people who can speak, regardless of time constraints, are probably outside of this statutory category regarding speaker time limits. Still, a restriction on the total number of speakers could be a "reasonable" rule if the local government can demonstrate how that rule promotes the underlying policies of efficiency and order while protecting the public's right to speak. Bear in mind that such a rule would also have to pass constitutional muster, as discussed later in this bulletin.

B. Spokespeople

The statutes also allow "providing for the designation of spokesmen for groups of persons supporting or opposing the same positions."[12] Here, the statute balances representation for both sides of an issue with reducing repetitive commentary that might otherwise monopolize the entire public comment period. This approach allows local governments to efficiently hear both sides of an issue while preserving time for other topics. Neither the statutes nor case law provide guidance on how and when such rules should provide for spokespeople.

Presumably, these decisions lie within the discretion of local governments as they draft their rules. Local governments should focus on the apparent goals of this provision—allowing robust discussion of both sides of an issue while reducing redundancy. Some boards may wish to set a threshold for triggering the spokesperson rule. For example, a spokesperson may be required if speakers making the same general points in favor of or against an issue would take most of the time provided for public comment. Another version of that rule would require spokespeople if a majority of the commenters plan to make the same general points in favor of or against an issue. The number of people who wish to speak should also likely factor into drafting this category of rule. A very small number of people making repetitive points is probably less burdensome to efficiency and order than a very large number. Local governments, working closely with their attorneys, are in the best position to strike that balance in their rules.

11. G.S. 160A-81.1 (cities); 153A-52.1 (counties); 115C-51 (local school boards).
12. *Id.*

C. Delegates

The third illustrative category of permissible public comment period rules is "providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall."[13] Unlike the spokesperson provision, this provision has a clear triggering mechanism—when the meeting room is not big enough to accommodate the number of people in attendance. As a result, rules that mandate selecting delegates in other situations, such as when there are many commenters but plenty of meeting-room space, are probably outside the scope of this particular portion of the statutes.[14] Like the spokesperson provision, though, this portion of the statutes gives no guidance on *how* to select delegates. That process is again left to local governments, subject only to the requirement that it be "reasonable." Perhaps it would be reasonable to allow a certain amount of time for those who cannot fit within the meeting room to select their own delegates. Another option would be for local governments to request volunteer delegates. Without a set statutory approach, many options could be permissible.

D. Order and Decorum

Finally, the statutes allow local governments to adopt rules providing for the "maintenance of order and decorum."[15] This portion of the statutes presents some challenges in interpretation. First, the concepts of order and decorum are highly subjective, and no cases have defined these terms for purposes of these statutes. Second, rules adopted under this provision may raise constitutional issues. Certain common rules, such as bans on profanity, insults, or personal attacks, might be statutorily authorized as providing for order and decorum but might not survive a constitutional challenge. Section IV evaluates the relevant constitutional protections.

E. Disruptive Conduct

In addition to adopting reasonable public comment rules, the statute also empowers local governments to eject individuals from meetings if they are intentionally causing a disturbance. Under Chapter 143, Section 318.17 of the North Carolina General Statutes (hereinafter G.S.), anyone who willfully disturbs, disrupts, or interrupts a public meeting can be charged with a Class 2 misdemeanor if they do not desist or leave upon the chair's request. A North Carolina Court of Appeals case recently became the first appellate case to interpret this statute.[16] In *State v. Barthel*, the defendant stood silently at the back of a board meeting room and unfurled a lewd banner shortly before the public comment period began.[17] In so doing, the defendant did not obstruct anyone's view, make noise, or otherwise noticeably interrupt the proceedings.[18] Law enforcement removed the defendant after he refused to take down his banner, and a jury ultimately convicted him of disrupting an official meeting under G.S. 143-318.17.[19]

13. *Id.*
14. Such a rule may fall within the spokesperson provision discussed in Section III.B, above.
15. *Id.*
16. State v. Barthel, 924 S.E.2d 74 (N.C. Ct. App. 2025).
17. *Id.* at 81.
18. *Id.* at 80–81.
19. *Id.* at 81–82.

The court of appeals struck down the defendant's conviction in part because it violated his First Amendment rights, which this bulletin discusses later in detail. Additionally, the court found that the defendant was not disrupting the meeting by silently holding a banner in the back of the room without blocking anyone's view.[20] In fact, the court explained, it was the government's *reaction* to the defendant's banner that caused the disruption.[21] There was no evidence that the defendant's banner was impeding the meeting's progress until law enforcement engaged with him.[22] While this case does not explicitly define what behavior constitutes an interruption, disruption, or disturbance under G.S. 143-318.17, it does suggest that silent protest alone is unlikely to fit the bill. Even if the defendant's banner was designed to elicit a response, the banner in and of itself was insufficient to constitute a disturbance to the meeting.[23]

Governments should take care, then, to ensure that an individual is actually having a material impact on the board's ability to proceed with the meeting before invoking this statute. The chair or presiding officer should also give the individual the opportunity to cease their behavior before involving law enforcement.

IV. First Amendment Overview

For public comment period policies and practices to be legal, they must be statutorily authorized *and* constitutional. This section focuses on constitutional concerns under the First Amendment.

A. First Amendment Public Forum Doctrine

The First Amendment of the U.S. Constitution provides that "Congress shall make no law . . . abridging the freedom of speech."[24] It is a common misconception that this language provides an unfettered right for the public to speak, but the constitutional language itself does not support this interpretation. Instead of stating that the public has a right to speak freely, the text of the First Amendment places a limitation on the government. It says what the government *cannot* do, not what the public *can* do. While this distinction may appear overly technical, it directs courts' analysis of First Amendment claims in practice. One of the first elements a court examines in a case involving a restriction on speech on government property is *where* the speech occurred.[25] Because the First Amendment limits the government, courts must assess the location of the speech to determine what standard of review they will apply to the government's regulations in a given forum. Courts will apply this standard of review both to a regulation as written and to the government's *application* of that regulation. A policy that appears constitutional as written can still violate the First Amendment if applied in an unconstitutional manner.[26]

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20. *Id.* at 90–91.
21. *Id.* at 89–90.
22. *Id.*
23. *Id.* at 90–91.
24. U.S. Const. amend. I.
25. *See, e.g.*, Minn. Voters Alliance v. Mansky, 585 U.S. 1, 11–13 (2018) (first portion of the analysis of forum classification).
26. *See* Educ. Media Co. at Va. Tech, Inc. v. Insley, 731 F.3d 291, 298 n.5 (4th Cir. 2013) (explaining the difference between a facial challenge and an as-applied challenge).

The United States Supreme Court has identified four categories of forums: traditional public forums, designated public forums, limited public forums, and nonpublic forums.[27] How do courts assess which forum category applies? The touchstone of that analysis is the government's intent for the forum.[28] To evaluate the government's intent for speech or expression in a given area, courts review the government's policies and practices.[29] They also analyze the nature, physical characteristics, and history of the area to determine whether it is conducive to speech.[30] The next subsections describe the various categories of forums and the corresponding standards of judicial review.[31]

Traditional Public Forums

Traditional public forums are typically outdoor areas such as public parks, streets, squares, and highways. Courts regard these areas as "held in trust for the use of the public, and, time out of mind, . . . used for purposes of assembly, communicating thoughts between citizens, and discussing public questions."[32] The government has the least power to regulate speech in traditional public forums. To regulate the content of speech in these areas, the government must show that "its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end."[33] Regulations that limit only the time, place, and manner of speech—rather than content—may be upheld if they are "narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication."[34] Drafting constitutional restrictions on content in traditional public forums is extremely difficult given the heavy burden the government must satisfy, and courts rarely uphold such restrictions against constitutional challenges. Content-neutral time, place, and manner restrictions have a better chance of success against a First Amendment challenge, but the standard is still quite high.

Designated Public Forums

Unlike traditional public forums, designated public forums are not areas that have been traditionally dedicated to public expression; rather, the government intentionally opens them for public speech.[35] With designated public forums, the government makes the area generally available for speech purposes for a wide variety of speakers and topics.[36] A government can close a designated forum at will, but while the forum is open, the same demanding First Amendment protections and standards of judicial review used for traditional public forums apply.[37] The

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27. *See* Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 576 U.S. 200, 215–16 (2015) (analyzing four categories of forum: traditional, designated, limited, and nonpublic).

28. Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 802 (1985).

29. *Id.*

30. *Id.*; *see also* Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n, 460 U.S. 37, 46–47 (1983).

31. For a more robust explanation of the First Amendment and forum doctrine, see Kristi A. Nickodem & Kristina Wilson, *Responding to First Amendment "Audits" in the Local Government Context*, Loc. Gov't L. Bull. No. 141 (UNC School of Government, Nov. 2022), https://www.sog.unc.edu/sites/default/files/reports/2022-11-09%2020220124%20LGLB%20141.pdf.

32. *Perry*, 460 U.S. at 45 (quoting Hague v. CIO, 307 U.S. 496, 515 (1939)).

33. *Id.*

34. *Id.*

35. Ark. Educ. Television Comm'n v. Forbes, 523 U.S. 666, 677 (1998).

36. Sons of Confederate Veterans, Va. Div. v. City of Lexington, 722 F.3d 224, 230 (4th Cir. 2013) (citing Child Evangelism Fellowship of Md., Inc. v. Montgomery Cnty. Pub. Sch., 457 F.3d 376, 382 (4th Cir. 2006)).

37. *Perry*, 460 U.S. at 45–46.

underlying reasoning may be that if the government invites such a broad array of speech by its own action, it cannot subsequently attempt to prevent or restrict the content of speech that it invited.

Limited Public Forums

Similar to designated public forums, limited public forums also originate as nonpublic forums—areas not historically intended for speech purposes. To create a limited public forum, the government again takes intentional action to open the space for speech.[38] However, in limited public forums, the government opens the space only for certain speakers or certain content.[39] Since the government has placed initial restrictions on speech within the forum, it retains greater power to regulate speech than it does in traditional or designated public forums, so long as it stays within the boundaries of those initial restrictions. To pass First Amendment muster, governmental restrictions on speech in such areas need only be viewpoint-neutral and reasonable.[40] As discussed later, this is not a particularly burdensome standard, unlike the standard of review applied to traditional and designated public forums.

Nonpublic Forums

Nonpublic forums are areas of government property that have not been dedicated or used for speech purposes.[41] "Courts have consistently found public property to be a nonpublic forum where the evidence shows . . . that the property's purpose is to conduct or facilitate government business, and not to provide a forum for public expression."[42] In these areas, the government has greater ability to craft and apply policies that limit or restrict speech, so long as these policies and practices are viewpoint-neutral and reasonable.[43]

The classification of a forum is significant because it dictates how much leeway the government has to regulate speech in a particular area. Before applying the public forum doctrine to local government board meetings and public comment periods, it is useful to address the question of the public's First Amendment rights at board meetings more generally.

B. The Public's Right to Speak at Board Meetings

Outside of a public comment period or public hearing, does the public have a right to be heard at a board meeting? The North Carolina open meetings law gives the public the right to access an official meeting of a government body.[44] The right of access includes the right to attend and the right to film, broadcast, livestream, photograph, and otherwise record public meetings.[45] The open meetings law does not, however, guarantee a right to speak, as the court of appeals clarified

38. Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 576 U.S. 200, 215 (2015) (citing Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 829 (1995)).

39. *Id.*

40. Pleasant Grove v. Summum, 555 U.S. 460, 470 (2009); *see also Rosenberger*, 515 U.S. at 829.

41. Minn. Voters Alliance v. Mansky, 585 U.S. 1, 11–12 (2018) (quoting *Perry*, 460 U.S. at 46).

42. Freedom Found. v. Wash. Dep't of Ecology, 426 F. Supp. 3d 793, 801 (W.D. Wash. 2019) (first citing *Mansky*, 585 U.S. 1 (polling places); then citing *Perry*, 460 U.S. at 37 (employee mailboxes); then citing Greer v. Spock, 424 U.S. 828 (1976) (military base); and then citing Preminger v. Principi, 422 F.3d 815 (9th Cir. 2005) (Department of Veterans Affairs nursing home)), *aff'd*, 840 F. App'x 903 (9th Cir. 2020).

43. *Mansky*, 585 U.S. at 11–12.

44. G.S. 143-318.10(a).

45. G.S. 143-318.14(a).

in *Umstead Coalition v. Raleigh-Durham Airport Authority*.[46] There, the plaintiffs argued that the defendant airport authority violated the open meetings law by failing to provide an opportunity for public comment before approving a lease.[47] The court rejected this argument, explaining that the open meetings law does not require soliciting public comment, nor does it require formal discussion or debate of a pending motion or issue.[48] In short, the open meetings law does not provide an independent right for the public to be heard.[49]

Regardless of state statutes, could a member of the public argue that they have a constitutional right to speak at local government board meetings, even outside of a public comment period or a public hearing? As the Supreme Court has stated, "[t]he Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy."[50] Still, both state and federal cases indicate that the First Amendment applies to restrictions on speech in local government board meetings and that such board meetings are limited public forums.[51] Consequently, a local government is "justified in limiting its meeting to discussion of specified agenda items and in imposing reasonable restrictions to preserve the civility and decorum necessary to further the forum's purpose of conducting public business."[52] Local governments therefore at least have an argument that confining spoken comment to a public hearing or public comment period is a reasonable restriction that allows for efficiency without burdening the public's right to speak. How a court would rule on that argument is unclear.

V. The First Amendment and Public Comment Periods

An area's forum classification dictates the standard of review a court will apply to a government's regulation of speech within that area. As the previous sections discussed, courts have generally treated board meetings as limited public forums. These cases do not apply a separate classification or standard to the public comment periods held at those meetings, so presumably they too are limited public forums.[53] In a limited public forum, governments may restrict or limit speech so long as the limitations are viewpoint-neutral and reasonable.[54] To be viewpoint-neutral, a restriction must not treat opinions and perspectives differently.[55] A government cannot

46. 275 N.C. App. 384, 400–01 (2020).
47. *Id.* at 399–400.
48. *Id.* at 400–01.
49. *Id.* at 401.
50. Minn. State Bd. of Cmty. Colls. v. Knight, 465 U.S. 271, 283–84 (1984).
51. *See, e.g.*, State v. Barthel, 924 S.E.2d 74, 86–87 (N.C. Ct. App. 2025) (assuming the First Amendment applied and holding that a county board of commissioners meeting was a limited public forum for purposes of the First Amendment); Davison v. Rose, 19 F.4th 626, 635 (4th Cir. 2021) (parties agreed that a school board meeting was a limited public forum); Steinburg v. Chesterfield Cnty. Plan. Comm'n, 527 F.3d 377, 385 (4th Cir. 2008) (all parties agreed commission meeting was a limited public forum).
52. *Steinburg*, 527 F.3d at 385.
53. *Barthel*, 924 S.E.2d at 87–88; *Davison*, 19 F.4th at 635; *Steinburg*, 527 F.3d at 385.
54. Pleasant Grove v. Summum, 555 U.S. 460, 470 (2009); *see also Rosenberger*, 515 U.S. at 829.
55. Child Evangelism Fellowship of S.C. v. Anderson Sch. Dist. Five, 470 F.3d 1062, 1067 n.2, 1068 (4th Cir. 2006).

prohibit certain opinions on one topic while allowing others on the same topic. For example, allowing a commenter to speak in favor of a development project while prohibiting a speaker from criticizing the same project would be unconstitutional viewpoint discrimination.

As for reasonableness, local governments do not have to act in the best or most reasonable way.[56] Instead, they must only be able to demonstrate that their regulation or practice supports a legitimate government objective in light of the purpose of the forum.[57] Regulations should also be consistent and "be guided by objective, workable standards."[58] Federal courts have recognized the safety and efficacy of employees and the dignity and efficiency of government proceedings as legitimate government objectives.[59] How does that legal framework play out in public comment period policies? The next several subsections explore specific provisions in public comment period policies.

A. Restrictions on Personal Attacks and Insults

The U.S. Court of Appeals for the Fourth Circuit has repeatedly upheld prohibitions on personal attacks and insults during public comment periods against First Amendment challenges.[60] As the Fourth Circuit noted in *Steinburg v. Chesterfield County Planning Commission*, bans on personal attacks serve the legitimate government interest of maintaining decorum since personal attacks can lead to arguments that detract from the efficiency and order of a meeting.[61] Recall, though, that the *application* of such policies can be unconstitutional if enforced in an unreasonable or viewpoint-discriminatory manner.[62]

Fourth Circuit precedent is not binding on North Carolina with respect to federal constitutional questions, and the North Carolina Court of Appeals departed from the Fourth Circuit's jurisprudence on this topic in *State v. Barthel*. There, law enforcement removed the defendant from the board meeting due to his lewd and derogatory banner.[63] In evaluating the defendant's as-applied challenge to his conviction, the court stated that the government "cannot ban offensive words or criticism of public officials under the guise of maintaining order."[64] The court further noted that the banner's content fell within the stated purpose of the forum,

56. Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 808 (1985).

57. Minn. Voters Alliance v. Mansky, 585 U.S. 1, 16–17 (2018).

58. *See id.* at 21.

59. *See*, *e.g.*, Steinburg v. Chesterfield Cnty. Plan. Comm'n, 527 F.3d 377, 387 (4th Cir. 2008); United States v. Gilbert, 920 F.2d 878, 886 (11th Cir. 1991).

60. Davison v. Rose, 19 F.4th 626, 635–36 (4th Cir. 2021); *Steinburg*, 527 F.3d at 387.

61. *Steinburg*, 527 F.3d at 387. *See also Davison*, 19 F.4th at 635. The Fourth Circuit has not yet had an opportunity to assess policies that prohibit addressing comments to individual board members. However, the rationale of preventing arguments and promoting order and decorum in government proceedings might similarly support such policies. *See*, *e.g.*, Scearce v. Pittsylvania Cnty. Bd. of Supervisors, No. 4:23-CV-00012, 2023 WL 6121129, at *8 (W.D. Va. Sept. 19, 2023) (citing *Steinburg* in support of policy prohibiting addressing comments to individual board members where plaintiff did not dispute constitutionality of policy but raised an as-applied challenge).

62. *See*, *e.g.*, Platt v. Mansfield, 162 F.4th 430, 434 (4th Cir. 2025) (plaintiffs did not challenge the facial constitutionality of a policy prohibiting personal attacks or criticisms of students, but instead raised an as-applied challenge to that policy).

63. State v. Barthel, 924 S.E.2d 74, 80–81, 90 (N.C. Ct. App. 2025). At oral argument, the state's counsel indicated that law enforcement was enforcing a ban on profanity and personal attacks, though the court does not make clear whether this was a formal policy.

64. *Id.* at 82.

which was to allow comment on agenda items.[65] The defendant's banner, in part, criticized a public official's job performance, and so the court held that the content of the banner was speech that "the forum was designed to accommodate."[66] Removing the defendant on the basis of the banner's message therefore "served no legitimate purpose of facilitating orderly public comment."[67] Moreover, the court concluded, restricting critical views about public officials expressed through personal insults constituted viewpoint discrimination.[68]

Does *Barthel* then invalidate all policies prohibiting personal attacks or profanity? Not exactly. *Barthel* did not evaluate a public comment policy; rather, it analyzed the constitutionality of a criminal conviction for disrupting a public meeting under G.S. 143-318.17. However, *Barthel* does signal that such policies should be drafted and applied cautiously. It may be helpful for a policy prohibiting personal attacks and insults to articulate its relationship to the purpose of public comment periods, in addition to the general promotion of order and decorum.

B. Restrictions on Profanity

The First Amendment generally protects profanity, though there are some exceptions.[69] The U.S. Supreme Court explicitly established this principle in *Cohen v. California*.[70] There, the defendant was convicted of disturbing the peace after wearing a jacket emblazoned with "F*** the Draft."[71] The Supreme Court reversed the appellate court, which had upheld Cohen's conviction.[72] In so doing, the Court held that Cohen's profanity was protected speech and that "the State may not, consistently with the First and Fourteenth Amendments, make the simple public display here involved of this single four-letter expletive a criminal offense."[73] It further remarked that "one man's vulgarity is another's lyric" and reflected that government officials are not in an appropriate position to "make principled distinctions in this area."[74]

Following *Cohen*, the Supreme Court vacated and remanded two state court opinions—one from Oklahoma and one from New Jersey—involving criminal convictions for foul and offensive

65. *Id.* at 88.
66. *Id.* at 89.
67. *Id.* at 90.
68. *Id.* at 88–89.
69. Cohen v. California, 403 U.S. 15, 26 (1971) (holding that the state could not, "consistently with the First and Fourteenth Amendments, make the simple public display here involved of this single four-letter expletive a criminal offense."); *see also* Berger v. Battaglia, 779 F.2d 992, 1000 (4th Cir. 1985) ("One of the fundamental rights secured by the amendment is that of free, uncensored artistic expression—even on matters trivial, vulgar, or profane." (first citing Winters v. New York, 333 U.S. 507 (1948); then citing Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968); and then citing Connick v. Myers, 461 U.S. 138, 157 n.1 (1983) (Brennan, J., dissenting))). The First Amendment does not protect profanity that constitutes obscenity, true threats, or fighting words. Virginia v. Black, 538 U.S. 343 (2003) (true threats); Roth v. United States, 354 U.S. 476 (1957) (obscenity); Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) (fighting words). For more on fighting words, please see Phil Dixon, *Criminalizing Offensive Speech: The Fighting Words Exception to the First Amendment*, North Carolina Criminal Law Blog (Mar. 11, 2026), https://nccriminallaw.sog.unc.edu/2026/03/11/criminalizing-offensive-speech-the-fighting-words-exception-to-the-first-amendment/.
70. 403 U.S. 15 (1971).
71. *Id.* at 16.
72. *Id.* at 26.
73. *Id.*
74. *Id.* at 25.

language.[75] In both cases, the defendants used profanity at public meetings.[76] The Oklahoma Court of Criminal Appeals dismissed the defendant's conviction without issuing a separate opinion or reasoning.[77] The Supreme Court of New Jersey vacated the defendant's conviction, finding that, after *Cohen*, his use of the "f-word" was protected speech.[78] Similarly, profanity was at least partially at the heart of the North Carolina Court of Appeals' reversal of Barthel's conviction. There, order and decorum did not justify a criminal conviction for disrupting a meeting on the basis of "offensive words," which could be interpreted to include profanity.[79] As those and other cases demonstrate, in *Cohen*'s aftermath, both federal and state appellate courts have reversed criminal convictions premised on profanity.[80]

However, the question of whether profanity can support a criminal conviction is different from whether a government's restriction of profanity at a public meeting can survive a constitutional challenge. On the federal level, only the Ninth Circuit seems to have confronted this precise issue as of this writing.[81] In *White v. City of Norwalk*, the plaintiffs challenged the constitutionality of an ordinance prohibiting profanity when addressing the city council.[82] After banning the use of profanity, the ordinance then authorized the removal of any such person "who makes such remarks, or who utters loud, threatening, personal or abusive language, or engages in any *other* disorderly conduct which *disrupts, disturbs or otherwise impedes* the orderly conduct of any Council meeting."[83] In defense of its ordinance, the city relied on this second qualifying sentence to argue that the ordinance only prohibited profanity when the speaker was also acting in a way that actually disturbed the meeting.[84]

The Ninth Circuit accepted this reading and upheld the ordinance in part because of the particular context of city council meetings.[85] The Ninth Circuit recognized that "[p]rinciples that apply to random discourse may not be transferred without adjustment" to the more structured situation of a city council meeting.[86] Although the First Amendment certainly applies to city

75. Brown v. Oklahoma, 408 U.S. 914 (1972); Rosenfeld v. New Jersey, 408 U.S. 901 (1972).

76. State v. Rosenfeld, 303 A.2d 889, 890 (N.J. 1973); Brown v. State, 492 P.2d 1106, 1107 (Ok. Crim. App. 1971).

77. Brown v. State, 503 P.2d 571 (Ok. Crim. App. 1972) (mem.).

78. *Rosenfeld*, 303 A.2d at 894–95.

79. State v. Barthel, 924 S.E.2d 74, 90 (N.C. Ct. App. 2025).

80. *See, e.g.*, Wood v. Eubanks, 25 F.4th 414, 425–26 (6th Cir. 2022) (reversing defendant's conviction for disorderly conduct premised on his use of profanity toward police officers because his speech was protected by the First Amendment); State v. Poe, 88 P.3d 704, 715–17, 725 (Idaho 2004) (invalidating statute criminalizing profane language in the presence of children in part because the First Amendment protects profanity but affirming defendant's conviction because he did not raise an as-applied challenge).

81. The Eleventh Circuit considered an as-applied challenge where a school board policy against obscenity was used to silence a speaker who used the word *sh***. Moms for Liberty—Brevard Cnty. v. Brevard Public Schools, 118 F.4th 1324 (11th Cir. 2024). Although the policy did not define what it considered to be obscene, testimony established that the definition included profanity. *Id.* at 1338. The court found that *sh*** did not rise to the level of obscenity, even under the school board's own definition. *Id.* As a result, limiting the speech frustrated the purpose of the forum and was therefore unreasonable. *Id.* at 1338–39. The Eleventh Circuit did not reach the issue of whether the school board "could properly prohibit other profane or explicit speech at school board meetings, even if it does not rise to the level of true obscenity." *Id.* at 1338.

82. 900 F.2d 1421, 1422–24 (9th Cir. 1990).

83. *Id.* at 1424.

84. *Id.*

85. *Id.* at 1425–26.

86. *Id.* at 1425.

council meetings, they are still, "a governmental process with a governmental purpose," where the "content-oriented control of speech cannot be imported into the Council chambers intact."[87] In contrast, the Ninth Circuit invalidated a similar ordinance in *Acosta v. City of Costa Mesa*.[88] There, an ordinance prohibited profane remarks when addressing the city council, without any other qualifiers.[89] Unlike in *White*, the ordinance's text explicitly prohibited profanity without any other limiting language. There was no way to read the statement "[n]o person shall make any *personal, impertinent, profane, insolent, or slanderous remarks*" as only prohibiting profanity that was part of a meeting disturbance.[90] As a result, the *Acosta* court was unable to adopt a limiting interpretation like it did in *White*.[91] Because the ordinance prohibited profanity even if it did not disrupt, disturb, or impede meetings, the ordinance was overbroad and unconstitutional on its face.[92]

On the state level, our own state appellate court has only tangentially addressed this issue in *Barthel*, and relevant precedent from other states is similarly sparse. Where does that leave local governments that currently have policies prohibiting profanity? If local governments take their cues from Ninth Circuit precedent, policies with a blanket prohibition on profanity may be suspect, whereas policies that prohibit profanity within the context of behavior that disrupts or disturbs a meeting may better withstand constitutional challenges. Additionally, based on *Barthel*, removing someone based on profanity alone may be constitutionally suspect.

On the other hand, Ninth Circuit precedent is not binding on the Fourth Circuit or on North Carolina state courts. Local governments may be able to persuade federal courts in North Carolina that prohibiting profanity in the distinct setting of local government meetings is reasonable given the purpose of the forum.[93] On the state level, the success of such an argument in state court is more dubious after *Barthel*, though it is also true that *Barthel* did not deal with public comment policies. Even after *Barthel*, it still may be possible to craft a policy banning profanity that could survive a facial constitutional challenge.

C. Limiting Comments to Agenda Items

Local governments also sometimes limit public comments to items on the meeting agenda. No in-state appellate court cases have considered this type of public comment period policy provision. The Fourth Circuit in both *Steinburg* and *Davison* approved policies confining comments to agenda items.[94] Consequently, there is a cognizable argument that limiting public comments to agenda items is constitutional. Recall, though, that public comment period policies must be both statutorily authorized *and* constitutional. Although not explicit, arguably, the

87. *Id.*
88. 718 F.3d 800, 810–11, 816 (9th Cir. 2013).
89. *Id.* at 813.
90. *Id.* at 811, 813.
91. *Id.* at 812–15.
92. *Id.* at 816. Notably, the defendant's convictions were upheld in part because there was ample evidence that he actually disrupted the meeting, unlike in *White*. *Id.* at 829.
93. Some of the language in *White* may be useful for this argument. *See White*, 900 F.2d at 1425.
94. Davison v. Rose, 19 F.4th 626, 635 (4th Cir. 2021); Steinburg v. Chesterfield Cnty. Plan. Comm'n, 527 F.3d 377, 385 (4th Cir. 2008).

public comment period rules that governments adopt should fall within—or be aligned with—the four delineated statutory categories: (1) time limits, (2) spokespeople, (3) delegates, and (4) order and decorum.[95]

One could argue that limiting comments to agenda items supports maintaining order and decorum by promoting the efficiency and effectiveness of the meeting. A counterargument is that such a policy undermines the purpose of the public comment period statutes. The General Assembly likely intended public comment periods to give the public an opportunity to speak on a variety of local government matters. If a member of the public's concern never appears on an agenda, that member would never be able to participate in public comment. That argument, however, is based more in policy and the spirit of the law than in its letter. With no relevant case law, it is difficult to know how successful such arguments might be.

D. Restricting Board Members from Responding

Another common provision prohibits board members from responding to public comments during the public comment period. There do not appear to be any federal or state appellate cases evaluating such a policy, so its enforceability is uncertain. However, the Supreme Court has stated that the First Amendment does not "require government policymakers to listen *or respond to* individuals' communications on public issues."[96] There are several cognizable arguments local governments can make in support of this policy. For example, the policy arguably promotes order and decorum by limiting back-and-forth conversation between the board and individual commenters that might detract from the time available for others. Moreover, such a policy appears to be viewpoint-neutral, as it does not identify or single out any particular opinions or perspectives. Additionally, Fourth Circuit case law likely supports the reasonableness of such a policy. Recall that *Steinburg* and *Davison* upheld limits on personal attacks because they reduced the potential for arguments and therefore helped facilitate dignified and efficient proceedings.[97] These objectives seem equally relevant in the context of prohibiting board members from responding to public comments.

One possible objection to this policy is the potential burden on *board members'* rights. Like members of the public, individual board members enjoy First Amendment rights. There are at least two potential responses to this objection. The first is that this restriction is constitutional even as applied to board members for the reasons stated above. The policy does not single out particular board members' opinions or perspectives, but instead bans all board members from responding during the public comment period, regardless of what perspective those responses might express.[98]

A second counterargument is that board members speaking at board meetings are engaging in government speech to which the First Amendment does not apply. As the United States Supreme Court has noted, "[t]he Free Speech Clause restricts government regulation of private speech; it does not regulate government speech."[99] Governments are entitled to say what

95. G.S. 160A-81.1 (cities); 153A-52.1 (counties); 115C-51 (local school boards).

96. Minn. State Bd. of Cmty. Colls. v. Knight, 465 U.S. 271, 285 (1984) (emphasis added).

97. *Davison*, 19 F.4th at 635; *Steinburg*, 527 F.3d at 387.

98. Additionally, such a policy would not prohibit board members from responding to comments during other portions of the board meeting beyond the public comment period, so if there is a burden on their right to speak, it is not significant.

99. Pleasant Grove v. Summum, 555 U.S. 460, 467 (2009).

they wish, and by the same token, limit their own speech as well.[100] To determine whether something is government speech, courts consider several factors, including whether the vehicle of expression has traditionally been used to convey government messages, whether the public associates the vehicle of expression with the government, and whether the government has direct control over the expression.[101]

These factors weigh in favor of concluding that board members are engaging in government speech when they speak at an official meeting. Board meetings are a vital means of conveying government messages to the public, and it would be difficult to imagine the public not identifying the government's own board meetings with the government. Finally, the board sets its own agenda for meetings and has direct control over the actions and content of its meetings.[102] As a result, board members may have limited ability to challenge such policies as violating their First Amendment rights.

VI. Practical Considerations

Understanding the statutory and constitutional frameworks surrounding public comment periods is an essential first step, but applying the law can be challenging in practice. The next two subsections provide guidance for drafting and applying enforceable public comment period policies.

A. Considerations for Policies

Statutory Authority

Enforceable policies are those that are both statutorily authorized and constitutional. Any restriction in a public comment period policy must be tied to statutory authority. That means it must be (1) a time limit, (2) a provision for spokespeople or delegates, (3) a provision for order and decorum, or (4) another "reasonable rule governing the conduct" of the public comment period. If the restriction is not clearly a time limit, related to spokespeople or delegates, or related to order and decorum, the policy should articulate how it connects to those categories or otherwise falls within the broader statutory authority to manage the conduct of the public comment period in a reasonable manner.

Constitutionality

Statutory authority is an important piece of the puzzle, but even a statutorily authorized policy will fail if it does not comply with the First Amendment. Public comment period policies should clearly define the forum the government seeks to create. If the government intends to create a limited public forum, it should clearly communicate any content or speaker limitations. The policy should explicitly identify the legitimate government interest that its restrictions serve and explain *how* those restrictions directly serve that interest. Finally, the policy should be internally consistent, clearly articulated, capable of consistent application, and it should not identify any particular viewpoints or perspectives for differential treatment.

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100. *Id.* at 467–68.

101. Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 576 U.S. 200, 210–14 (2015).

102. Frayda Bluestein, *Who Controls the Agenda?*, Coates' Canons: NC Local Government Law Blog (April 16, 2013), https://canons.sog.unc.edu/blog/2013/04/16/who-controls-the-agenda/.

Special Considerations

Policies prohibiting or limiting profanity, personal attacks, and insults must be carefully crafted. After *Barthel*, a blanket ban on personal attacks without further nuance or justification could be suspect. Defining what constitutes a personal attack and distinguishing it from protected criticism of a public official or a staff member's job performance may strengthen the policy. If prohibiting profanity, it may be useful to define what constitutes profanity and whether there are special considerations that justify limiting or banning it. For example, a ban on profanity might be more likely to serve a legitimate government interest in school board meetings where children may be present. Any bans on profanity, personal attacks, and/or insults should be supported by a clearly articulated connection to a legitimate government objective, such as protecting the decorum and efficiency of government proceedings.

B. Considerations for Practice

A local government's policies are only as good as its practices. In other words, having an enforceable, constitutional policy will not protect a governmental body from liability if it does not apply its policy lawfully. The considerations below aim to help governments do just that.

Training

It is essential for a local government's board members to know and understand its public comment period policy. This is particularly true for the mayor, chair, or other presiding officer, who is responsible for running meetings and deciding whether to invoke G.S. 143-318.17 to remove a disruptive member of the public. Members should understand both what the policy limits or prohibits and why. That means providing training on both the statutory authority and constitutional concerns underlying the policy, including reminding members that it is critical to apply the policy in a viewpoint-neutral manner. Government attorneys, managers, and clerks should also be trained on the policy to help support the board and presiding officers during public comment periods.

Policy and Legal Citations

If a commenter violates the policy, the presiding officer should be able to identify the portion of the policy that the commenter is violating, clearly and accurately articulate the provision to the commenter, and explain why the commenter is in violation. Any enforcement action should be directly connected to clearly identified and cited prohibitions or restrictions in the policy. If a local government wants to invoke G.S. 143-318.17, it should do so because an individual is materially interfering with the government proceeding, perhaps even above and beyond that individual's speech alone. When directing the individual to desist or leave, the presiding officer should explain that they are being removed because of a meeting disturbance, not merely because of disfavored speech.

Notice

There is no legal requirement to provide the public with prior notice of public comment period policies. However, doing so may be useful in managing public expectations regarding permissible commentary. Local governments might consider making their policy available online, posting it in the meeting room, and/or having the presiding officer review the policy aloud before the public comment period begins.

Non-Arbitrary Enforcement

A local government exposes itself to liability when it treats similarly situated individuals differently in applying its policy. As a result, local governments should be careful to enforce their public comment policies in an even-handed and consistent manner. Limitations on content should be enforced in a viewpoint-neutral manner to preserve the local government's desired forum classification. For viewpoint-neutrality purposes, if profanity is prohibited, local governments must restrict it equally when used in effusive praise and in vehement criticism. If there is a general ban on signs, all signs must be restricted, no matter who bears them or what they say.

Differing Results in State and Federal Court

With *Barthel*'s departure from Fourth Circuit precedent, jurisdictions can anticipate different results depending on the facts of the case and where a plaintiff files a lawsuit. If a plaintiff raises an as-applied challenge to a policy prohibiting profanity or insults in state court (e.g., following a criminal charge for trespass or disrupting a public meeting), they may have a greater chance of success in *Barthel*'s wake. Conversely, if they file a 42 U.S.C. § 1983 lawsuit alleging a violation of their First Amendment rights in federal court, they may be less likely to prevail. Local governments should pay attention to where a plaintiff chooses to bring suit on an as-applied challenge.

VII. Conclusion

The statutory framework and constitutional protections applicable to public comment periods aim to balance orderly, productive government proceedings and the public's fundamental right to express its thoughts and concerns to the government. When this balance is achieved, local governments reap a significant reward in the form of productive meetings and positive public relations.