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MEMORANDUM

To: Brian Barroso, City Manager
Via: Kendal Harden, Interim City Attorney
From: Michael Pope, Assistant City Attorney
Date: July 11, 2025
RE: Profanity During Public Comment

Introduction

This memorandum addresses whether Key West City Code Section 2.1 prohibits the use of profane language only to the extent that it causes a disruption to city commission meetings. It also examines whether restrictions on such speech must be narrowly tailored to prevent disruption or maintain decorum, and whether the appropriate remedy for profane and disruptive speech is to ask the speaker to leave rather than issuing a warning letter. Based on the legal standards and case law, the analysis concludes that restrictions on speech must be narrowly tailored, and the appropriate remedy for disruptive speech is removal from the meeting, not the issuance of a warning letter.

Statement of Facts

The query concerns the interpretation of Key West City Code Section 2.1, which prohibits the use of profane language during city commission meetings. The issue is whether this prohibition applies only when such language causes a disruption to the meeting. Additionally, the query seeks clarification on whether restrictions on speech must be narrowly tailored to prevent disruption or maintain decorum, and whether the appropriate remedy for profane and disruptive speech is to ask the speaker to leave rather than issuing a warning letter.

Legal Standards/Rules

1. The First Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, prohibits laws abridging the freedom of speech. *Dep't of Educ. v. Lewis*, 416 So. 2d 455 (Fla. 1982). The first amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. *United Fac. of Fla. v. Fla. Bd. of Regents*, 585 So. 2d 991 (Fla. Dist. Ct. App. 1991); *Romero v. State*, 314 So. 3d 699 (Fla. Dist. Ct. App. 2021).
2. Courts have recognized that public bodies may adopt reasonable time, place, and manner regulations to ensure the orderly conduct of public meetings. For example, in *Jones v. Heyman*, 888 F.2d 1328 (11th Cir. 1989), the court upheld the removal of a disruptive speaker from a city commission meeting as a reasonable regulation that did not violate the speaker's First Amendment rights.
3. Florida law criminalizes the willful and malicious interruption or disturbance of any lawful assembly, including public meetings. Fla. Stat. § 871.01.

Analysis

Key West City Code Section 2.1 prohibits the use of profane language during city commission meetings. However, this prohibition must be interpreted in light of First Amendment protections, which require that restrictions on speech be narrowly tailored to serve a significant governmental interest, such as preventing disruption or maintaining decorum. *Montgomery v. State*, 69 So. 3d 1023 (Fla. Dist. Ct. App. 2011). The U.S. Supreme Court has held that the government cannot restrict speech based solely on its content or message. See *United Fac. of Fla. v. Fla. Bd. of Regents*, 585 So. 2d 991 (Fla. Dist. Ct. App. 1991); *Montgomery v. State*, 69 So. 3d 1023 (Fla. Dist. Ct. App. 2011).

In *Jones v. Heyman*, the court upheld the removal of a disruptive speaker from a city commission meeting, emphasizing that public bodies have the authority to regulate disruptive behavior to ensure the orderly conduct of meetings. This case supports the interpretation that Key West City Code Section 2.1 prohibits profane language only to the extent that it causes a disruption to the meeting. *Jones v. Heyman*, 888 F.2d 1328 (11th Cir. 1989).

Regarding the appropriate remedy for profane and disruptive speech, *Jones v. Heyman* demonstrates that removal of the disruptive individual from the meeting is a reasonable and lawful response. There is no legal precedent supporting the issuance of a warning letter as a remedy for such speech. *Id.*

Conclusion

Key West City Code Section 2.1 prohibits the use of profane language during city commission meetings only to the extent that it causes a disruption to the meeting. Restrictions on speech, including profane language, must be narrowly tailored to prevent disruption or maintain decorum. The appropriate remedy for profane and disruptive speech is to ask the speaker to leave the meeting, as removal is a reasonable time, place, and manner regulation. There is no legal precedent supporting the issuance of a warning letter as a remedy for such speech.

Please let me know if you have questions or would like to discuss this further.