

John Kavanagh

From: Hannah Nies
Sent: Thursday, August 29, 2024 10:21 AM
To: John Kavanagh
Cc: Kate Sawyer; Rusty Crandell
Subject: Surprise City Council rule; state law

Dear Senator Kavanagh:

The City of Surprise Policies and Procedures Manual prescribes rules for the public at council meetings. *City of Surprise Policies and Procedures Manual*, City of Surprise, <https://content.civicplus.com/api/assets/Occec016-2ee3-445f-8006-12b00a4a7892> (last amended Aug. 1, 2023). One such rule is that when a member of the public is addressing the council,

[o]ral communications during the City Council meeting may not be used to lodge charges or complaints against any employee of the City or members of the body, regardless of whether such person is identified in the presentation by name or by any other reference that tends to identify him/her. Any such charges or complaints should be submitted during normal business hours to the City Manager for appropriate action.

You have asked us whether this rule violates A.R.S. section 38-431.01, subsection I, which provides that "[a] public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body *on any issue within the jurisdiction of the public body.*" (Emphasis added).

Thus, whether a public body holds a call to the public is within the discretion of the public body. *See* Ariz. Op. Att'y Gen. No. I22-003 (Aug. 1, 2022); 2020 WL 1551793, at *2 (Ariz. A.G. Mar. 13, 2020). But if the public body decides to hold a call to the public, it must allow individuals to address the public body on any issue within its jurisdiction, subject only to reasonable time, place and manner restrictions. Additionally, to the extent there is any ambiguity in interpreting the statute, A.R.S. section 38-431.09, subsection A instructs that "any person or entity charged with the interpretations of [the open meeting law] shall construe [the open meeting law] in favor of open and public meetings." *See also* Ariz. Op. Att'y Gen. No. I22-003 (Aug. 1, 2022).

The rule you have identified prohibits persons from making any oral communications that constitute charges or complaints against city employees or members of a public body when addressing the public body (which would include during a call to the public). Although we were unable to identify any Arizona caselaw that explores the limits of what is "within the jurisdiction of the public body" for the purposes of this statute, the communications prohibited under the city council rule would almost certainly include issues within the jurisdiction of the city council. For example, under the rule, a member of the public could not present to the city council during a call to the public a complaint against a member of the city council even if that complaint directly related to the member's performance of his or her public duties. This particular complaint would clearly seem to be "within the jurisdiction of the city council."

A.R.S. section 38-431.01 does allow public bodies to make "reasonable time, place and manner" restrictions on calls to the public. Thus, the answer to this question turns on whether the city council rule constitutes such a restriction. The rule does not regulate the time, place or matter of speech; rather, it prohibits speech based on its content (and arguably its viewpoint).

Moreover, it is also worth noting that A.R.S. section 38-431.01, subsection I itself seems to anticipate that criticism might occur in an open call to the public during a public meeting. It provides that "[a]t the conclusion of an

open call to the public, individual members of the public body *may respond to criticism made by those who have addressed the public body*, may ask staff to review a matter or may ask that a matter be put on a future agenda.” (Emphasis added). This further indicates that the statute allows charges or complaints against members of a public body during a call to the public.

Therefore, to the extent the city council rule you have identified prohibits members of the public from addressing the city council on issues within the city council's jurisdiction during a call to the public, this rule probably conflicts with A.R.S. section 38-431.01, subsection I.

Best,

Hannah Nies
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Arizona Legislative Council