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MEMORANDUM

TO: The Board of Trustees of the Trailer Estates Park and Recreation District

FROM: Mark P. Barnebey, Esq., Board Attorney ^{sts/10} _{MPB}

RE: Decorum and Disruption at Public Meetings

DATE: May 3, 2010

You have asked this office to review a policy regarding the public right to speak at Trustee Board Meetings.

It should be noted that this policy potentially impacts First Amendment rights and, as such, requires a constitutional analysis. While freedom of expression is protected by the First Amendment, it is not absolute and it does not guarantee persons the right to express their opinions "at all times or in any matter that may be desired." Heffron v. International Society for Krishna Consciousness, 452 U.S. 640 (1981).

The Board of Trustees appears to have designated portions of the weekly meeting as a public forum when the Board intentionally opened it to the public and permitted public comment on agenda items. See Jones v. Heyman, 888 F.2d 1328 (11th Cir. 1989). Although the Board of Trustees was not required to create this forum in the first place pursuant to Kessler v. Community Maritime Park Associates, Inc., 35 Fla. L. Weekly D538b, (Fla. 1st DCA 2010), once it did open up the meetings, the Board became bound by the same standards that apply in the case of a public forum. Jones v. Heyman, supra. In this case, it appears that the courts would construe the meeting of a Board of a Park and Recreation District as a limited public forum. See Rowe v. City of Cocoa Beach, 358 F.3d 800 (11th Cir. 2004).

In a public forum setting, content-neutral time, place and manner restrictions are permissible, if they are:

- a. narrowly drawn to achieve a significant governmental interest, and
- b. if they allow communication through other channels.

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The Courts have recognized the significance of the government's interest in conducting an orderly, efficient meeting. City of Madison School District No. 8 v. Wis. Employment Relations Commission, 429 U.S. 167 (1976); Jones v. Heyman, supra. To deny the presiding officer of the authority to control irrelevant debate and disruptive behavior at a public meeting would allow such meetings to "continue interminably." It would also have the potential to deny others the opportunity to speak. Jones v. Heyman, supra; Rowe v. City of Cocoa, supra.

The proposed rule, which is attached, provides a process in adequate detail based on the current case law.

The Board also asked if a disruptive member of the public could be banned for a period beyond the meeting at hand. It is likely that such ban would be unconstitutional as a prior restraint of expression. A prior restraint of expression would exist because the Board denied access to a forum before the expression begins. Bourgeois v. Peters, 387 F.3d 1303 (11th Cir. 2004). Generally, a governmental body cannot prohibit future expressive activity as a result of past unlawful conduct. Polaris Amphitheatre Concerts, Inc. v. City of Westerville, 267 F.3d 503 (6th Cir. 2001); Brown v. City of Jacksonville, 2006 WL 385085 (M.D. Fla. 2006), (where the court found that the barring of an individual from attending city council meetings by the city council for almost three months to be unconstitutional).

As with many of these issues, I would expect that questions related to this policy would focus on the facts of the particular situation. Care should be given to be reasonable and not to base any determination related to this matter to the content of the speech.

If you have any questions, please do not hesitate to contact me.

cc: Scott Rudacille, Esq.