FIRE
Foundation for Individual Rights and Expression

February 6, 2025

Garden City Mayor & City Council
City Council Chambers
6000 Middlebelt Road
Garden City, Michigan 48135

Sent via U.S. Mail

Dear Mayor and City Council:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, writes today to urge the City Council to review and revise its public comment policies that infringe the rights of its residents. Both a 2021 federal appellate court ruling and the recent settlement of FIRE's First Amendment lawsuit against the City of Eastpointe, Michigan, underscore the need for the City Council to make the necessary policy revisions.

The First Amendment protects speech by members of the public at government meetings.[1] The public comment period is, at a minimum, a limited public forum, which means the government may restrict the content of commenters' speech only when those restrictions are viewpoint-neutral *and* reasonable in light of the forum's purpose.[2] While municipal bodies can prohibit genuinely disruptive conduct—such as speaking out of turn or making true threats[3]—they cannot stretch the meaning of disruption to encompass constitutionally protected speech.

The U.S. Court of Appeals for the Sixth Circuit—whose decisions bind the City Council—made this clear in 2021 when its decision in *Ison v. Madison Local School District Board of Education* invalidated bans on "antagonistic," "abusive," and "personally directed" public comments at local government meetings.[4] As the Sixth Circuit explained, such restrictions

[1] *City of Madison, Joint Sch. Dist. No. 8 v. Wisc. Emp. Rels. Comm'n*, 429 U.S. 167, 174–76 (1976).

[2] *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995).

[3] A "true threat" is a statement through which "the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003).

[4] 3 F.4th 887, 895 (6th Cir. 2021).

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impose "impermissible viewpoint discrimination" by prohibiting nondisruptive speech "purely because it disparages or offends."[5]

FIRE put those principles into practice when it filed suit on behalf of four Eastpointe, Michigan residents against the city and its mayor, Monique Owens, after she repeatedly prohibited them from criticizing her during the public comment period of City Council meetings. The November 2022 suit challenged not only the constitutionality of Mayor Owens' actions but also Eastpointe's policy barring public comments "directed" at an individual council member.

In April 2024, Eastpointe reached a settlement with the residents that required the City Council to refrain from enforcing its unconstitutional ban on public comments directed at council members; to allow members of the public to criticize Eastpointe officials; to pay damages and attorneys' fees totaling $83,000; and to apologize to its censored residents.[6] Eastpointe citizens are now free to express even severe criticism of public officials at City Council meetings without facing unlawful censorship.

As Garden City maintains similarly unconstitutional public comment policies, FIRE strongly urges the City Council to reform these policies and avoid costly and time-consuming litigation.

In particular, the Council prohibits public comments that include "vulgarities, name calling, [or] personal attacks."[7] Fortunately, the Council can easily take the necessary steps to remedy this policy's legal shortcomings and safeguard its residents' First Amendment rights. FIRE would welcome the opportunity to work with the Council toward full First Amendment compliance, as we have successfully done with local governments in Michigan and across the country.[8]

Thank you for your attention to this matter. We look forward to hearing from you.

Sincerely,

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[5] *Id.* at 894; *see also Matal v. Tam*, 582 U.S. 218, 243 (2017) ("Giving offense is a viewpoint."); *Rosenberger*, 515 U.S. at 829 (viewpoint discrimination is an "egregious" form of censorship, and the "government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction").

[6] *See VICTORY: Michigan town declares Sept. 6 'First Amendment Day' after FIRE sues its mayor for shouting down residents*, FIRE (Apr. 17, 2024), https://www.thefire.org/news/victory-michigan-town-declares-sept-6-first-amendment-day-after-fire-sues-its-mayor-shouting-0.

[7] City Council Rules of Procedure, CITY OF GARDEN CITY, MICH., https://www.gardencitymi.org/DocumentCenter/View/30/City-Council-Rules-of-Procedure--PDF?bidId=.

[8] *See, e.g.*, Carrie Robison, *VICTORY: Michigan city recognizes First Amendment right to 'demean' government officials*, FIRE (Jan. 17, 2024), https://www.thefire.org/news/victory-michigan-city-recognizes-first-amendment-right-demean-government-officials.

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