



March 26, 2026

Aleksandr Boksner, Esq.  
City Attorney  
PO Box 150027  
Cape Coral, Florida 33915-0027

*Sent via U.S. Mail and Electronic Mail (aboksner@capecoral.gov)*

Dear Mr. Boksner:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech nationwide, is deeply concerned by the City of Cape Coral's threats of legal action against residents and community groups who displayed the city's seal or logos on privately run websites. The First Amendment protects third parties' expressive use of official symbols—including to criticize, comment on, or satirize the government. Yet Cape Coral's ordinance and policies categorically ban any private use of the city's seal or logos without prior authorization. These restrictions and the city's threats to enforce them are unconstitutional. FIRE calls on the city to rescind its cease-and-desist letters and bring its ordinance, policies, and actions into compliance with the First Amendment.

Our concerns arise out of recent reports that the City of Cape Coral has sent cease-and-desist letters to residents who run social media pages, online forums, or other websites that depict the city's seal or logos,<sup>1</sup> including to Kyle L'Hommedieu, chair of local watchdog group Take Out The Trash Committee of Cape Coral (TOTTC).<sup>2</sup> TOTTC identifies itself on its website's homepage as an independent citizen group "exposing corruption in our city, skyrocketing taxes, and bloated city budgets."<sup>3</sup> TOTTC also runs a Facebook page featuring posts criticizing and satirizing city officials and policies.<sup>4</sup> The page makes clear TOTTC is a private organization,

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<sup>1</sup> Kendall Brandt, *City of Cape Coral sends cease-and-desist letters over logo use*, GULF COAST NEWS FORT MYERS (Mar. 3, 2026), <https://www.gulfcoastnewsnow.com/article/florida-cape-coral-logo-cease-desist-letter/70596299>. The narrative in this letter represents our understanding of the pertinent facts based on public reporting, but we invite you to share any additional information you may have.

<sup>2</sup> Take Out The Trash Committee of Cape Coral Inc., FACEBOOK (Feb. 4, 2026, 7:09 PM), <https://www.facebook.com/photo/?fbid=122149130588815683&set=pcb.122149130702815683>. The letter is dated January 30, 2026.

<sup>3</sup> TAKE OUT THE TRASH COMM. OF CAPE CORAL, <https://www.raiseyourvoicecc.org>. The group's stated mission is "to empower our community by illuminating the truth, advocating for ethical governance, and ensuring that our elected officials are held to the highest standards of service." *Id.*

<sup>4</sup> *Take Out The Trash Committee of Cape Coral Inc.*, FACEBOOK, <https://www.facebook.com/profile.php?>

prominently displaying the group’s name and the following description: “This Non-Profit will work with the public to hold the Mayor and all Members of the Cape Coral council accountable for their actions. Our Citizens need to be heard!” The page’s banner image shows a sign bearing the city logo that appears behind the city council during its meetings.

Cape Coral’s cease-and-desist letter to TOTTC specifically objects to a post on its website by “Concerned Citizen” criticizing Cape Coral’s pension system and urging greater transparency from the city regarding pension data.<sup>5</sup> The post displays the official Cape Coral logo, the city seal, and the logos of the city’s fire and police departments, with photos of city officials superimposed on the latter three.<sup>6</sup> The letter asserts the seal and logos were “impermissively [*sic*] published without the express authorization of the City,” and warns their continued use could result in fines and imprisonment. It further states that if TOTTC does not remove the images from its website within 24 hours, the city will “initiate all necessary and appropriate legal action(s)” under state and local law.

Section 165.043 of the Florida Statutes authorizes municipalities to designate an official seal and purports to criminalize the display of such a seal without the governing body’s express approval (except when municipal officials or employees do so in the performance of their duties).<sup>7</sup> Cape Coral adopted its official seal and logos through Ordinance No. 43-25, which makes it unlawful for private citizens to “circulate, manufacture, publish, use, display or offer for sale any letters, papers, documents, or items of merchandise which simulate” the city seal or logos without “prior written authorization by the City Manager or their designee.”<sup>8</sup> The city’s logo policy likewise requires the city’s prior written authorization for “[a]ll non-City use.”<sup>9</sup> Separately, it includes a ban on unauthorized private use of “any mark that imitates, resembles, or could reasonably be mistaken for the City logo, where such mark is designed, intended, or likely to confuse, deceive, or mislead the public.”<sup>10</sup>

## **I. Cape Coral’s Seal and Logo Rules—and Threats to Enforce Them Against TOTTC—Violate the First Amendment as Unconstitutional Content-Based Restrictions**

The city’s blanket ban on the use of its seal or logos without advance permission—and its threat

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id=61574470514236.

<sup>5</sup> See Concerned Citizen, *Cape Coral Keeps DROP Pension Bonus Data Hidden as Millions in Tax Dollars Flow to Top-Earning Employees*, TAKE OUT THE TRASH COMM. OF CAPE CORAL (Jan. 26, 2026; updated Feb. 10, 2026), <https://www.raiseyourvoicecc.org/post/cape-coral-keeps-drop-pension-bonus-data-hidden-as-millions-in-tax-dollars-flow-to-top-earning-emplo>.

<sup>6</sup> The post indicates it was updated on February 10, eleven days after the date of the cease-and-desist letter. It is unclear if the images of city officials were added at that time or were part of the original post. In either case, TOTTC’s use of the seal and logos is a form of protected expression, as explained below. Screenshots of the depictions of the city seal and logos on TOTTC’s website and Facebook page are enclosed.

<sup>7</sup> Fla. Stat. § 165.043.

<sup>8</sup> The ordinance is codified in Article I, Section 12-1 in the Cape Coral Code of Ordinances.

<sup>9</sup> *City Logo & Usage*, CAPE CORAL FLA.,

[https://www.capecoral.gov/departments/office\\_of\\_communications/city\\_logo\\_usage.php](https://www.capecoral.gov/departments/office_of_communications/city_logo_usage.php).

<sup>10</sup> *Id.*

to enforce that ban against L’Hommedieu, TOTTC, and others—violates the First Amendment.

In general, the “government, including a municipal government vested with state authority, has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”<sup>11</sup> Regulations that “target speech based on its communicative content ... are presumptively unconstitutional.”<sup>12</sup> They must survive strict scrutiny,<sup>13</sup> the “most demanding test known to constitutional law.”<sup>14</sup> Thus, “[i]t is rare that a regulation restricting speech because of its content will ever be permissible.”<sup>15</sup> Such restrictions are upheld “only if the government proves that they are narrowly tailored to serve compelling state interests.”<sup>16</sup> They must address a “real problem” in a way that “restricts no more speech than necessary.”<sup>17</sup>

Private expression involving government symbols is entitled to First Amendment protection.<sup>18</sup> By targeting speech that depicts specific symbols, Cape Coral’s ordinance and logo policy, and the related state statute, regulate speech based on content.<sup>19</sup> Presumably, the restrictions are intended to serve the city’s interest in preventing the misuse of its symbols to convey government endorsement of a document or message. This interest likely does not qualify as compelling in the constitutional sense.<sup>20</sup>

But even assuming this interest is compelling, the restrictions are far broader than necessary to serve it. They ban *any* unauthorized private display of the city seal or logos. That includes displays tied to commentary, criticism, or reporting on municipal affairs—like that on TOTTC’s websites—that do not purport to be official city communications or imply city endorsement. The prohibition therefore interferes with the “free flow of ideas and opinions on matters of public interest and concern” at “the heart of the First Amendment.”<sup>21</sup> Under Cape Coral’s policies, even a news article referring to the seal could not include an image of it without the

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<sup>11</sup> *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (cleaned up).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997).

<sup>15</sup> *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 799 (2011).

<sup>16</sup> *Reed*, 576 U.S. at 163.

<sup>17</sup> *United States v. Playboy Entm’t Grp.*, 529 U.S. 803, 822, 836 (2000); *see also Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004) (explaining that a speech regulation having “some effect” in furthering a compelling interest is not enough to satisfy strict scrutiny; rather, the regulation must restrict speech “no further than necessary to achieve the goal, for it is important to ensure that legitimate speech is not chilled or punished”).

<sup>18</sup> *See Spence v. Washington*, 418 U.S. 405, 408 (1974) (display of the American flag with a peace symbol attached was a form of protected expression); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 632 (1943) (“use of an emblem or flag to symbolize some system, idea, institution, or personality, is a short cut from mind to mind” and an “effective way of communicating ideas”).

<sup>19</sup> *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1126 (11th Cir. 2022) (“A regulation is content-based if it suppresses, disadvantages, or imposes differential burdens upon speech because of its content.”) (cleaned up).

<sup>20</sup> A compelling interest is one “of the highest order,” *Reed*, 576 U.S. at 172, such as protecting national security, *In re Nat’l Sec. Letter v. Sessions*, 863 F.3d 1110, 1123 (9th Cir. 2017).

<sup>21</sup> *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

city’s permission. Burdening so much protected speech for no legitimate reason—let alone a compelling one—is unconstitutional.<sup>22</sup>

Although the separate ban on unauthorized use of images that “resemble” Cape Coral’s logo is limited to those that are “designed, intended, or likely to confuse, deceive or mislead the public,” it likewise reaches a broad swath of protected expression, including satire and parody. The First Amendment protects publication of altered or imitative versions of official symbols to criticize or lampoon government,<sup>23</sup> including TOTTC’s display of the city seal and department logos with city officials’ faces superimposed over them. The ban on images that are “likely to confuse,” even when such confusion is unintended, sweeps too broadly. The fact that some people might be confused by an image that parodies or otherwise resembles a city logo does not strip that expression of constitutional protection.<sup>24</sup> And the fact that TOTTC received a cease-and-desist letter—even though its use of the seal and logos was not likely to deceive anyone into thinking Cape Coral endorsed the group’s sharp criticism of the city, as explained below—demonstrates that this purported limitation has no practical effect.

Nor does Cape Coral have any legitimate interest in these restrictions deriving from trademark law. The city cannot trademark its official insignia.<sup>25</sup> Courts have repeatedly warned that expanding trademark rights beyond the goal of “protect[ing] the ability of consumers to distinguish among competing producers” runs headlong into the First Amendment.<sup>26</sup> Trademark law cannot be used “to quash an unauthorized use of the mark by another who is communicating ideas or expressing points of view.”<sup>27</sup>

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<sup>22</sup> *United States v. Williams*, 553 U.S. 285, 292 (2008) (a law is unconstitutionally overbroad when it prohibits “a substantial amount of protected speech” relative to its “plainly legitimate sweep”). Although Section 165.043 of the Florida Statutes is not within Cape Coral’s power to amend or repeal, the city remains responsible for ensuring its own enforcement complies with the First Amendment. A municipality may not enforce a state law in a manner that violates the Constitution. *See* U.S. CONST. ART. VI, CL. 2. For the same reasons that the city cannot constitutionally enforce its ordinance and policies to punish protected displays of its seal or logos, it likewise may not enforce the state statute to penalize that expression.

<sup>23</sup> *See Hustler Magazine*, 485 U.S. at 53–57 (holding the First Amendment protected a parody ad and discussing America’s long tradition of satire and parody as forms of political commentary); *SunTrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1278 (11th Cir. 2001) (explaining that parody has “significant value as free speech under the First Amendment” and is “a vital commodity in the marketplace of ideas that deserves substantial freedom—both as entertainment and as a form of social and literary criticism”) (cleaned up).

<sup>24</sup> *See Farah v. Esquire Magazine*, 736 F.3d 528, 537 (D.C. Cir. 2013) (holding the First Amendment protected a satirical blog post even if “some actual readers were misled”).

<sup>25</sup> *In re City of Houston*, 731 F.3d 1326 (Fed. Cir. 2013).

<sup>26</sup> *MGFB Props., Inc. v. Viacom Inc.*, 54 F.4th 670, 677 (11th Cir. 2022).

<sup>27</sup> *Utah Lighthouse Ministry v. Found. for Apologetic Info. & Research*, 527 F.3d 1045, 1052–53 (10th Cir. 2008) (quoting *L.L. Bean, Inc. v. Drake Publishers, Inc.*, 811 F.2d 26, 29 (1st Cir. 1987), and *Bosley Med. Inst., Inc. v. Kremer*, 403 F.3d 672, 675 (9th Cir. 2005)). Similar limitations apply in the copyright context. Just as Cape Coral cannot trademark its official insignia, it has no copyright in them. The city’s seal and logo are “public records,” defined to include “all documents ... or other material ... made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Fla. Stat. § 119.011(12); *see also id.* § 119.011(2) (defining “agency” to include any “unit of government created or established by law”). Government entities in Florida may not assert copyright protections over public records absent express legislative authorization. *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 875–76 (Fla. Dist. Ct. App. 2004). And

Courts have repeatedly invalidated similar attempts to prohibit expressive uses of government symbols. In a case directly on point, *Rothamel v. Fluvanna County*, a federal court held that a county’s enforcement of an ordinance criminalizing unauthorized use of the county seal violated the First Amendment.<sup>28</sup> Like TOTTC, the plaintiff in that case had placed the seal alongside news articles and commentary on his blog about county affairs.

In *Renna v. County of Union*, another federal court rejected a county’s attempt to prevent a critic from displaying the county seal on a public-access television program discussing local government.<sup>29</sup> The county invoked trademark law, but the court explained that a municipality cannot trademark its insignia under federal law and emphasized that trademark law, even when applicable, “is not properly employed to stifle discussion.”<sup>30</sup> Rather, it “protects only against mistaken *purchasing decisions* and not against confusion generally.”<sup>31</sup> The court further recognized that the critic’s use of the seal was “political expression, entitled to the highest degree of constitutional protection.”<sup>32</sup>

The city’s prohibition is unconstitutional both on its face and as applied to TOTTC. The group used (or allowed use of) the seal and logos as a vehicle for political commentary about Cape Coral’s government—speech “at the very center of the constitutionally protected area of free discussion.”<sup>33</sup> Again, even assuming the city has a compelling interest in preventing uses of its symbols that are intended and likely to deceive, TOTTC plainly did not attempt to deceive anyone into believing that any document or message originated from or was endorsed by the city. The group’s pages prominently identify it as an independent watchdog group and contain criticism and satire of city officials and policies. No reasonable reader would mistake TOTTC’s commentary for an official communication from the very government body it is criticizing. The cease-and-desist letter therefore violates TOTTC’s First Amendment rights.<sup>34</sup>

The letter also raises the specter of viewpoint discrimination, an “egregious” form of content-based censorship.<sup>35</sup> The government “must abstain from regulating speech when the specific

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no Florida statute authorizes municipalities to secure copyrights in their seals or logos. Moreover, “fair use of a copyrighted work ... for purposes such as criticism, comment, [and] news reporting ... is not an infringement of copyright.” 17 U.S.C. § 107. The First Amendment requires exceptions for such expressive uses. See *SunTrust Bank*, 268 F.3d at 1264.

<sup>28</sup> 810 F. Supp. 2d 771 (W.D. Va. 2011); see also *Lighthawk, The Env’t Air Force v. Robertson*, 812 F. Supp. 1095 (W.D. Wash. 1993) (U.S. Forest Service violated the First Amendment when it threatened to enforce a statute barring unauthorized use of “Smokey Bear” against an environmental organization that depicted the character in a political advertisement critical of government policies).

<sup>29</sup> 88 F. Supp. 3d 310 (D.N.J. 2014).

<sup>30</sup> *Id.* at 322.

<sup>31</sup> *Id.* (quoting *Bosley*, 403 F.3d at 677) (emphasis in original).

<sup>32</sup> *Id.* at 323.

<sup>33</sup> *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966).

<sup>34</sup> See *Bennett v. Hendrix*, 423 F.3d 1247, 1254 (11th Cir. 2005) (any official conduct that “would likely deter a person of ordinary firmness from the exercise of First Amendment rights” is unconstitutional). The city’s threats of fines and jail time are more than enough to deter a person of ordinary firmness from using its seal or logos without permission. Achieving that deterrence is the very purpose of cease-and-desist letters.

<sup>35</sup> *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

motivating ideology or the opinion or perspective of the speaker is the rationale.”<sup>36</sup> According to L’Hommedieu, the city’s enforcement was triggered by TOTTC’s critical commentary about city governance. He told a reporter, “[t]his all started due to us using the city’s logo and a news article that was published on our website, and that’s why this whole spiral came down.”<sup>37</sup> L’Hommedieu also noted that other local groups had long used the city’s logo without objection: “All the other Cape Coral residents’ groups have been using this logo for ages. Nobody has a problem. The second we did it, then the city went on attack.”<sup>38</sup> If the city is enforcing its policies against TOTTC (or any other group) because of its views, that would only compound the constitutional violations.

## **II. Cape Coral’s Ordinance and Policies Also Impose an Unlawful Prior Restraint in Violation of the First Amendment**

The city’s restrictions on using its official symbols also suffer from a separate, equally fatal defect: they operate as an unconstitutional prior restraint. A prior restraint is any “regulatory mechanism that can be used to deny a speaker permission to speak before the speech occurs.”<sup>39</sup> Cape Coral’s policies demand exactly that type of prior permission. They require anyone wishing to display the seal or logo to obtain written authorization from the city. The same goes for any intended use of similar images the city might later determine are “designed, intended, or likely to confuse, deceive, or mislead the public.” Even if the city *could* constitutionally punish some uses of its official symbols after the fact, its standardless licensing regime violates the First Amendment.

Prior restraints are the “most serious and the least tolerable infringement on First Amendment rights.”<sup>40</sup> There is a “heavy presumption” against their constitutionality.<sup>41</sup> Cape Coral’s ordinance and policies lack the constitutionally required “narrow, objective, and definite standards” to guide officials’ decisions about whether to allow uses of the seal, logos, or similar images.<sup>42</sup> There are *no* written standards for determining when to grant permission to display the unaltered city seal or logo. While the provision governing images that “resemble” the city’s logos purports to supply a likelihood-of-confusion standard, the city’s issuance of a cease-and-desist letter to TOTTC—in part for using apparently altered logos in a manner that plainly was neither intended nor likely to deceive anyone—shows that the standard does not meaningfully

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<sup>36</sup> *Id.*

<sup>37</sup> Brandt, *supra* note 1.

<sup>38</sup> *Id.*

<sup>39</sup> *Barrett v. Walker Cty. Sch. Dist.*, 872 F.3d 1209, 1226 n.11 (11th Cir. 2017); *see also id.* at 1223 (“licensing ordinances ... are classic examples of prior restraints”).

<sup>40</sup> *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976).

<sup>41</sup> *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). Even in the rare circumstances where a prior restraint is permissible, it must include “procedural safeguards designed to obviate the dangers of a censorship system.” *Freedman v. Maryland*, 380 U.S. 51, 58 (1965) (invalidating statute requiring government approval before movies could be shown). Any “restraint prior to judicial review can be imposed only for a specified brief period,” “expeditious judicial review of that decision must be available,” and the government “must bear the burden of going to court to suppress the speech and must bear the burden of proof once in court.” *Solantic, Ltd. Liab. Co. v. City of Neptune Beach*, 410 F.3d 1250, 1270 (11th Cir. 2005).

<sup>42</sup> *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969).

constrain official discretion. The policies' grant of unbridled discretion invites arbitrary and viewpoint-based decision-making in violation of the First Amendment.<sup>43</sup>

### **III. Conclusion**

FIRE calls on the City of Cape Coral to immediately rescind its cease-and-desist letters threatening Mr. L'Hommedieu, TOTTC, and others with legal action for displaying the city's seal or logos. We further urge the city to repeal or revise Ordinance No. 43-25 and the logo policy so that they respect and uphold the First Amendment rights of all Cape Coral residents.

Note that government officials are not entitled to qualified immunity—and therefore may be held personally liable—when they violate clearly established constitutional rights.<sup>44</sup> There can be no doubt that the right to use the logos of a government body to criticize that body is well-established under First Amendment precedent and principles of which a reasonable government official would be aware. To that end, please be advised that a federal court recently denied qualified immunity to a school district superintendent who threatened litigation against parents for including the district's name in the title of a Facebook page devoted to discussion about the district.<sup>45</sup> The superintendent believed the title was misleading, and some community members mistook the page for a district-sponsored forum. The court nonetheless held the parents were “engaged in constitutionally protected activity in the hosting, content, and title of their page,” and that the superintendent's threatened lawsuit was an “obvious” First Amendment violation.<sup>46</sup>

We appreciate your prompt attention to this matter and respectfully request a substantive response no later than April 2, 2026.

Sincerely,



Aaron Terr, Esq.  
Director of Public Advocacy

Cc: Michael Ilczyszyn, City Manager  
Maureen Buice, Assistant to the City Manager  
Melissa Mickey, Communications Manager  
Kimberly Bruns, City Clerk

Encl.

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<sup>43</sup> See *Barrett*, 872 F.3d at 1221 (“Perhaps the plainest example of an unconstitutional grant of unbridled discretion is a law that gives a government official power to grant permits but that provides no standards by which the official's decision must be guided.”); *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750 (1988) (holding that a municipal permitting scheme giving the mayor unfettered discretion to grant or deny permits for newspaper racks on public property violated the First Amendment).

<sup>44</sup> *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

<sup>45</sup> *Tachias v. Los Lunas Schs. Bd. of Educ.*, 636 F. Supp. 3d 1328 (D.N.M. 2022).

<sup>46</sup> *Id.* at 1340, 1348.



## Take Out The Trash Committee of Cape Coral Inc.

3.9K likes · 20K followers

This Non-Profit will work with the public to hold the Mayor and all Members of the Cape Coral council accountable for their actions. Our Citizens need to be heard!

■ Nonprofit organization

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# Cape Coral Keeps DROP Pension Bonus Data Hidden as Millions in Tax Dollars Flow to Top-Earning Employees

Updated: Feb 10



## Cape Coral's Pension Windfall Comes at the Public's Expense

Cape Coral taxpayers are being asked to fund one of the most expensive pension systems in Florida, while being denied basic transparency about who benefits and by how much.