



August 20, 2026

Jefferson County Council
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Dear Jefferson County Council:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech nationwide, is concerned by the rules governing public comment periods at Council meetings. The First Amendment prohibits public bodies from adopting or enforcing vague, overbroad, or viewpoint-discriminatory rules that infringe citizens' rights to speak freely and criticize government officials. FIRE calls on the Jefferson County Council to bring its rules into compliance with the First Amendment.

Our concerns arise from Section 27 of the Rules of Procedure Governing Meetings Conducted by County Council, which states in relevant part: "There shall be no personal attacks against [sic] when making public comments."¹

As an initial matter, the rule appears to be incomplete: it omits the object of "against," leaving the provision without an identifiable scope and creating a baseline constitutional vagueness problem in addition to any vagueness problems with the words that *are* present. Given that the remainder of Section 27 imposes requirements on public commenters themselves—including submitting a request card and observing time limits—it appears the Council intended the bar on "personal attacks" to prevent commenters from directing them at others, rather than to protect speakers themselves from such attacks. But even then, whether the provision is intended to bar commenters from directing "personal attacks" at Council members, Jefferson County employees, and/or other individuals is unclear. In any event, as detailed below, none of those readings can be reconciled with the First Amendment.

¹ Jefferson County Missouri Council Rules of Procedure Governing Meetings (Dec. 26, 2024), <https://www.jeffcomo.gov/DocumentCenter/View/19355/Rules-of-Procedure-12-26-24-Resolution-Number-R24-1239-PDF>.

The First Amendment protects speech by members of the public at government meetings.² Public comment periods by their nature are, at minimum, limited public forums, where the government may impose only viewpoint-neutral restrictions that are reasonable in light of the forum’s purpose.³ The Council may, for example, adopt reasonable time limits on comments, as it has done elsewhere in Section 27. But it may not restrict comments because they are critical of government officials or employees, or “when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”⁴ The Council can likewise prohibit genuinely disruptive conduct—such as speaking when not recognized or making true threats.⁵ However, officials may not deem speech disruptive merely because they find it offensive, disparaging, or overly critical.

The Council’s ban on “personal attacks” unconstitutionally discriminates based on viewpoint because it selectively targets speech expressing a negative or critical perspective. The Supreme Court has made clear that even a restriction that “evenhandedly prohibits disparagement of all groups” is viewpoint discriminatory,⁶ and federal courts across the country have invalidated similar rules banning “personal attacks” or “antagonistic,” “abusive,” “derogatory,” “offensive,” “rude,” “insulting,” or “personally directed” public comments.⁷

To the extent the Council intends to ban “personal attacks” on Council members or other county officials, that raises especially grave constitutional concerns. The First Amendment reflects our “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and . . . may well include vehement, caustic, and

² *City of Madison, Joint Sch. Dist. No. 8 v. Wis. Emp. Rels. Comm’n*, 429 U.S. 167, 174–76 (1976).

³ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

⁴ *Id.*

⁵ “True threats are ‘serious expression[s]’ conveying that a speaker means to ‘commit an act of unlawful violence.’” *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (citing *Virginia v. Black*, 538 U.S. 343, 359 (2003)). True threats do not include speech which amounts to a joke or rhetorical hyperbole. *See, e.g., Watts v. United States*, 394 U.S. 705, 708 (1969) (man’s statement, after being drafted to serve in the Vietnam War—“If they ever make me carry a rifle the first man I want to get in my sights is L. B. J.”—was rhetorical hyperbole protected by the First Amendment, not a true threat to kill the president).

⁶ *Matal v. Tam*, 582 U.S. 218, 243 (2017).

⁷ *See, e.g., Moms for Liberty — Brevard Cnty. v. Brevard Cnty. Pub. Schs.*, 118 F.4th 1324 (11th Cir. 2024) (enforcement of restrictions on “abusive,” “personally directed,” and “obscene” public comments was unconstitutional); *Ison v. Madison Loc. Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 894–95 (6th Cir. 2021) (bans on “antagonistic,” “abusive,” and “personally directed” public comments violated First Amendment as effectuating “impermissible viewpoint discrimination” by prohibiting nondisruptive speech “purely because it disparages or offends”); *Mejia v. Lafayette Consol. Gov’t*, No. 6:23-CV-00307, 2025 U.S. Dist. LEXIS 52868, at *24–25 (W.D. La. Mar. 20, 2025) (library board had no authority to restrict public comments on grounds they were “vile,” “derogatory,” or “confrontational”); *Mama Bears of Forsyth Cnty. v. McCall*, 642 F. Supp. 3d 1338, 1350 (N.D. Ga. 2022) (school district’s public comment protocols stating that “attacks of a personal nature . . . will not be allowed or tolerated” constituted evidence of viewpoint discrimination).

sometimes unpleasantly sharp attacks on government and public officials.”⁸ The government cannot allow government officials to “be praised but not condemned.”⁹

Even aside from the rule’s fatal viewpoint discrimination, a ban on “personal attacks” is unreasonable and overbroad because it “prohibits a substantial amount of protected speech . . . not only in an absolute sense, but also relative to the statute’s plainly legitimate sweep.”¹⁰ A federal court blocked enforcement of similar bans on “abusive,” “inappropriate,” “offensive,” and “personally directed” public comments as encompassing a “broad array of constitutionally protected speech.”¹¹ The Council’s restrictions here likewise reach a vast amount of protected, non-disruptive speech. While the Council may be able to bar *some* speech if it *actually disrupts a meeting*, the policy has no language limiting enforcement to such cases.

The rule is also unconstitutionally vague because speakers “of common intelligence must necessarily guess at its meaning,”¹² and it lacks “explicit standards” to prevent “arbitrary and discriminatory enforcement.”¹³ Even in a limited public forum, where “some degree of discretion in how to apply a given policy is necessary, ‘that discretion must be guided by objective, workable standards’ to avoid the moderator’s own beliefs shaping his or her ‘views on what counts’ as a policy violation.”¹⁴

Absent more, the term “personal attacks” is vague because it is “irreparably clothed in subjectivity”—its interpretation varies from “speaker to speaker, and listener to listener.”¹⁵ And there is no “guidance or other interpretive tools to assist in properly applying” the rule, allowing officials’ personal views to shape enforcement.¹⁶ When does criticism of a Council member’s decision become an attack? Does any disagreement with the Council’s preferred position risk being ruled out of order? The First Amendment demands lines fixed by clear and objective criteria, not by the arbitrary sensibilities of officials who may be tempted to silence speech they find uncomfortable or politically inconvenient.

⁸ *N. Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964); see also *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (“[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”).

⁹ *Barron v. Kolenda*, 203 N.E.3d 1125, 1139 (Mass. 2023) (quoting *Matal*, 582 U.S. at 249 (Kennedy, J., concurring)).

¹⁰ *United States v. Williams*, 553 U.S. 285, 292 (2008).

¹¹ *Marshall v. Amuso*, 571 F. Supp. 3d 412, 425–26 (E.D. Pa. 2021) (noting the Supreme Court, in *Gooding v. Wilson*, 405 U.S. 518 (1972), found the term “abusive” overbroad in other contexts, reaching speech outside the “fighting words” category of unprotected speech).

¹² *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926).

¹³ *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

¹⁴ *Marshall*, 571 F. Supp. 3d at 425–26 (quoting *Minnesota Voters All. v. Mansky*, 585 U.S. 1, 21–22 (2018)). This “need for specificity is especially important where . . . the regulation at issue is a content-based regulation of speech,” as vagueness has an “obvious chilling effect on free speech.” *Id.* (quoting *Sypniewski v. Warren Hills Reg’l Bd. of Educ.*, 307 F.3d 243, 266 (3d Cir. 2002)).

¹⁵ *Id.*

¹⁶ *Id.*

When it comes to protected speech that some listeners may find objectionable, “the remedy to be applied is more speech, not enforced silence.”¹⁷ FIRE calls on the Jefferson County Council to revise its Rules of Procedure Governing Meetings Conducted by County Council to bring them into compliance with the First Amendment. We would be pleased to assist the Council—at no cost—in crafting policies that both respect constitutional limits and preserve order at meetings.

We respectfully request a substantive response to this letter no later than September 3, 2026.

Sincerely,

A handwritten signature in black ink that reads "Brennen VanderVeen". The signature is written in a cursive, slightly slanted style.

Brennen VanderVeen
Program Counsel, Public Advocacy

¹⁷ *Whitney v. California*, 274 U.S. 357, 377 (1927).