

October 29, 2026

Redmond City Council and Mayor Angela Birney
P.O. Box 97010
Redmond, WA 98073-9710

Sent via U.S. Mail and Email (council@redmond.gov; mayor@redmond.gov)

Dear Council Members and Mayor Birney:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech nationwide, is concerned by the City of Redmond's policy restricting comments posted on its social media pages.¹ Because several of these restrictions violate the First Amendment, FIRE calls on the City to promptly revise or remove them.

The First Amendment applies with full force to the "vast democratic forums of the Internet," including social media, which enables citizens to engage directly with elected representatives and other government officials.² As the Supreme Court recently made clear, when government actors use social media for official business, they must comply with the First Amendment.³ While the City's posts on its social media accounts constitutes its own speech not subject to First Amendment standards,⁴ the interactive parts of those accounts are different. By allowing public comments on its posts, the City has created, at minimum, a limited public forum, where restrictions on comments must be "viewpoint neutral and reasonable in light of the purpose served by the forum."⁵

¹ *Social Media Policy*, REDMOND, <https://www.redmond.gov/384/Social-Media-Policy> (last visited Oct. 28, 2026).

² *Packingham v. North Carolina*, 582 U.S. 98, 104–05 (2017) (quoting *Reno v. ACLU*, 521 U.S. 844, 868 (1997)).

³ *Lindke v. Freed*, 601 U.S. 187 (2024). The facts in *Lindke* concerned a government official's mixed use of his social media account for personal and government business. But the Court noted that in some cases, as when an account belongs to a government subdivision (e.g., a "City of Port Huron" Facebook page), state action is "clear." *Id.* at 202. That is the case here.

⁴ See *Shurtleff v. City of Bos.*, 596 U.S. 243, 247–48 (2022) (explaining that when the government creates a forum for speech, the First Amendment prevents it from discriminating against speakers based on their viewpoint, but "when the government speaks for itself, the First Amendment does not demand airtime for all views").

⁵ *Garnier v. O'Connor-Ratcliff*, 41 F.4th 1158, 1178 (9th Cir. 2022), *vacated and remanded on other grounds*, 601 U.S. 205 (2024); see also *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106–07 (2001). The interactive parts of the City's social media pages may even be designated public forums, particularly if the City has opened

Several restrictions in the City’s policy violate the First Amendment because they restrict speech based on viewpoint, which is unconstitutional in *any* forum.⁶ 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.”⁷

The ban on “[p]ersonal attacks” and “insults” is inherently viewpoint-discriminatory because it “impermissibly targets speech unfavorable to or critical of” individuals “while permitting other positive, praiseworthy, and complimentary speech.”⁸ The City cannot allow individuals, including City officials, to “be praised but not condemned.”⁹ Federal courts across the country have invalidated restrictions on public comments on the grounds they are “antagonistic,” “abusive,” “derogatory,” “offensive,” “inappropriate,” or “personal attacks”—even in limited public forums.¹⁰ Importantly, allowing *some* criticism does not justify censoring harsher or more pointed critiques. Freedom of expression necessarily protects “not only informed and responsible criticism” but also “the freedom to speak foolishly and without moderation,” particularly in criticizing “public men and measures.”¹¹ Bottom line: “Members of the public must be able to provide their feedback and critiques, even if some people, [City officials] included, find that distasteful, irritating, or unfair.”¹²

The prohibition on “hate speech” and “[c]ontent that promotes, fosters, or perpetuates discrimination” based on a protected category is also impermissibly viewpoint-based—it

commenting without clearly and consistently limiting discussion to specific topics under “unambiguous and definite” standards, in both policy and practice. *See Garnier*, 41 F.4th at 1178. If so, any content-based restrictions would be subject to more demanding scrutiny. *See Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009) (in a designated public forum, “any restriction based on the content of the speech must satisfy strict scrutiny, that is, the restriction must be narrowly tailored to serve a compelling government interest”); *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997) (strict scrutiny is the “most demanding test known to constitutional law”). Because the restrictions addressed in this letter are unconstitutional even under the less stringent limited public forum standard, we need not resolve which standard applies.

⁶ *See Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 46 (1983); *Am. Freedom Def. Initiative v. King Cnty.*, 904 F.3d 1126, 1132 (9th Cir. 2018) (“[I]t is settled law that, [even] in a nonpublic forum, regulations must be reasonable and viewpoint neutral.”).

⁷ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

⁸ *Mama Bears of Forsyth Cnty. v. McCall*, 642 F. Supp. 3d 1338, 1350 (N.D. Ga. 2022).

⁹ *Monroe v. Hous. Indep. Sch. Dist.*, 794 F. App’x 381, 383 (5th Cir. 2019) (quoting *Matal v. Tam*, 137 S. Ct. 1744, 1766 (2017)).

¹⁰ *See, e.g., Moms for Liberty — Brevard County v. Brevard County Public Schools*, 118 F.4th 1324 (11th Cir. 2024) (enforcement of restrictions on “abusive” and “personally directed” public comments was unconstitutional); *Ison v. Madison Local 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 “impermissible viewpoint discrimination” that prohibited nondisruptive speech “purely because it disparages or offends”); *Mama Bears of Forsyth Cnty.*, 642 F. Supp. at 1354–57 (invalidating public participation policy’s prohibition on “profanity” and “abusive remarks” as impermissible content- and viewpoint-based restrictions); *Marshall v. Amuso*, 571 F. Supp. 3d 412, 422–26 (E.D. Pa. 2021) (blocking enforcement of ban on “abusive,” “inappropriate,” “offensive,” and “personally directed” comments, as unconstitutional viewpoint discrimination).

¹¹ *Baumgartner v. United States*, 322 U.S. 665, 673–74 (1944); *see also N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (explaining that the First Amendment reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,” even when it includes “vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”).

¹² *Mama Bears of Forsyth Cnty.*, 642 F. Supp. 3d at 1350.

“reflects the Government’s disapproval of a subset of messages it finds offensive.”¹³ It is a “bedrock principle underlying the First Amendment” that officials cannot restrict speech simply because some find it “offensive or disagreeable.”¹⁴ As the Supreme Court has made clear, “[g]iving offense is a viewpoint.”¹⁵ That principle also protects speech deemed racist or discriminatory.¹⁶ Even a rule that “evenhandedly prohibits disparagement of all groups” constitutes viewpoint discrimination.¹⁷ Notably, the U.S. Court of Appeals for the Ninth Circuit—whose decisions bind the City—invalidated a transit policy prohibiting “[a]dvertising that contains material that demeans or disparages an individual, group of individuals or entity,” because the policy “discriminates, on its face, on the basis of viewpoint.”¹⁸

The City’s prohibition on “[c]onduct that suggests or encourages illegal activity” is likewise viewpoint-discriminatory. As written, it could be enforced to ban speech promoting anything from civil disobedience to the mental health benefits of psychedelic drugs. Yet the rule would allow expression of the opposite views on the same subject. That is the definition of viewpoint discrimination. While the First Amendment does not protect incitement—namely, speech that (1) advocates and (2) is *likely to result* in (3) *imminent* unlawful action¹⁹—the City’s policy is not limited to this narrow, unprotected category of speech.

Next, the ban on “[c]omments deemed potentially libelous” is viewpoint-discriminatory because it encompasses speech critical of others that does not necessarily constitute defamation. The First Amendment deprives government officials of the general power to censor speech they believe to be false or unfounded.²⁰ Although society has a strong interest in truthful discourse, allowing censorship on that basis “would give government a broad censorial power unprecedented in . . . our constitutional tradition.”²¹ Such authority would cast “a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom.”²² As the Supreme Court explained: “The remedy for speech that is

¹³ *Matal v. Tam*, 582 U.S. 218, 249 (2017) (Kennedy, J., concurring).

¹⁴ *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

¹⁵ *Matal*, 582 U.S. at 243.

¹⁶ See, e.g., *R.A.V. v. City of St. Paul*, 505 U.S. 377, 380, 391 (1992) (ordinance that prohibited placing on any property symbols that “arouse[] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender” violated the First Amendment by discriminating based on viewpoint).

¹⁷ *Matal*, 582 U.S. at 243.

¹⁸ *Am. Freedom Def. Initiative*, 904 F.3d at 1130–31. Although the City is prohibited from discriminating on the basis of race, sex, religion, and other protected categories, those obligations do not justify, let alone require, censoring the views expressed by private citizens in a public forum, as the Ninth Circuit’s decision makes clear. It is also why the Supreme Court held denial of federal trademark registration for the band name “The Slants” could not constitutionally rest on the basis that it constituted a derogatory term for people of Asian descent. *Matal*, 582 U.S. at 223. The Court rejected the government’s arguments that the First Amendment applies with less force to trademark registration as a “government program,” or that the government’s “seal of approval” made the trademark government speech immune from First Amendment scrutiny. *Id.* at 234–44.

¹⁹ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

²⁰ See *United States v. Alvarez*, 567 U.S. 709, 723 (2012).

²¹ *Id.*

²² *Id.*

false is speech that is true. This is the ordinary course in a free society.”²³

The City’s social media policy also contains rules that are unreasonable—and therefore unconstitutional—because they are vague, subjective, and/or restrict a substantial amount of protected speech. Speech restrictions in a limited public forum may not prohibit “a vast amount of material without legitimate justification.”²⁴ For a restriction to be reasonable, “there must be evidence that the restriction reasonably fulfills a legitimate need.”²⁵ Further, “standards for inclusion and exclusion in a limited public forum must be unambiguous and definite,” because “[a]bsent objective standards, government officials may use their discretion to interpret the policy as a pretext for censorship.”²⁶ In other words, the City “must be able to articulate some sensible basis for distinguishing what may come in from what must stay out,” using “objective, workable standards”²⁷—not “subjective or overly general criteria” that create a risk of arbitrary and discriminatory enforcement.²⁸

The above-mentioned ban on “[p]ersonal attacks” and “insults” is unconstitutionally vague. The policy does not define these terms or give any indication of when a comment crosses the line from legitimate criticism into these forbidden categories. The rule’s enforcement unacceptably turns on City moderators’ subjective and unpredictable judgments.

The same vagueness problem afflicts the prohibition on “threatening language” and “[c]omments inciting violence or hate speech.” The First Amendment does not protect true threats or incitement, but those are narrow and well-defined categories of unprotected speech, which the policy does not track.²⁹ Consider the following hypothetical comments: “More

²³ *Id.* at 727. Even if the rule were limited to actually defamatory comments, it would still have problems. While defamation, properly defined, is unprotected speech, whether a comment is defamatory is a complex legal issue resolvable only in an adversarial judicial proceeding in which the plaintiff must prove (1) the speaker made a provably false statement of fact, as opposed to a true statement or opinion; (2) the statement was communicated to a third party and the communication was unprivileged; (3) fault of the speaker, which in the case of speech about a public figure or official means they knew the statement was false or recklessly disregarded the truth; and (4) the statement caused cognizable harm to the plaintiff. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974); *Herron v. King Broad. Co.*, 776 P.2d 98, 101 (Wash. 1989). These findings cannot be unilaterally made by government employees monitoring social media pages.

²⁴ *Tucker v. Cal. Dep’t of Educ.*, 97 F.3d 1204, 1215 (9th Cir. 1996); *see also United States v. Williams*, 553 U.S. 285, 292 (2008) (explaining that a speech restriction is unconstitutionally overbroad when it “prohibits a substantial amount of protected speech . . . not only in an absolute sense, but also relative to the [restriction’s] plainly legitimate sweep”).

²⁵ *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 967 (9th Cir. 2002).

²⁶ *Hopper v. City of Pasco*, 241 F.3d 1067, 1077 (9th Cir. 2001).

²⁷ *Minn. Voters All. v. Mansky*, 585 U.S. 1, 16, 21 (2018).

²⁸ *Hopper*, 241 F.3d at 1077; *see also Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) (speech restrictions must “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited” and provide “explicit standards for those who apply them” to avoid “arbitrary and discriminatory enforcement”).

²⁹ “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) (quoting *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) (holding that 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). As explained,

criminals should get the death penalty”; “If someone breaks into my house, I will shoot them”; “I support the protesters, even if property gets damaged.” It is unclear whether these statements and others that merely reference, describe, or condone violence in certain circumstances would be banned. Yet they are all constitutionally protected and may be relevant to City issues. Judgments about whether comments are “hate speech,” which is not a legal category, are also “irreparably clothed in subjectivity”—the term’s meaning varies from “speaker to speaker, and listener to listener.”³⁰ And the policy provides no “guidance or other interpretive tools to assist in properly applying” the rules,³¹ leaving enforcement to the whim of whomever happens to be moderating the page on a given day.

While the City unquestionably has legitimate interests in protecting public safety, its ban on “[i]nformation that may tend to compromise the safety or security of the public or public system” allows officials to suppress speech based on nothing more than a claim that it *might* have *some* adverse effect on safety or security. Such “speculation or fancy” that an asserted harm may flow from speech does not justify its restriction in any kind of forum.³² Notably, a federal court enjoined a University of Washington security fee policy that applied to events “likely to significantly affect campus safety, security, and operation,” because it lacked “narrowly drawn, reasonable and definite standards.”³³ The same reasoning applies here.

The ban on “[p]ropane language or content” and “[o]bscene or explicit comments” speech also suffers from vagueness. The policy fails to define these terms, which can refer to specific swear words, sexually suggestive language, irreverence towards the sacred, or ideas generally considered offensive—raising concerns about viewpoint discrimination as well.³⁴ And even swear words receive First Amendment protection. The Supreme Court upheld, for instance, the right to wear a jacket with the words “Fuck the Draft” inside a courthouse where children were present, noting that “words are often chosen as much for their emotive as their cognitive force.”³⁵ If the government cannot ban profanity in a courthouse, it surely cannot ban it on a social media page open for public discussion, regardless of any vague aspiration to keep the page “family-friendly” or “appropriate for all ages.” While governing bodies may encourage civil discourse, formal enforcement of civility norms threatens expressive freedom because it relies on subjective evaluations of what speech is sufficiently polite or inoffensive and often

incitement encompasses speech “directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action.” *Brandenburg*, 395 U.S. at 447.

³⁰ *Marshall v. Amuso*, 571 F. Supp. 3d 412, 424 (E.D. Pa. 2021).

³¹ *Id.*

³² *Tucker v. Cal. Dep’t of Educ.*, 97 F.3d 1204, 1212 (9th Cir. 1996).

³³ *Coll. Republicans of the Univ. of Wash. v. Cauce*, No. C18-189-MJP, 2018 U.S. Dist. LEXIS 22234, at *7 (W.D. Wash. Feb. 9, 2018) (quoting *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 133 (1992)).

³⁴ See *Mama Bears*, 642 F. Supp. 3d at 1354–55. While the First Amendment does not protect obscenity, that term has a technical, legal meaning narrower than its colloquial usage and which the City’s policy does not clearly track. Expression is legally obscene, and thus unprotected, only if (1) the average person, applying contemporary community standards, would find that the speech, taken as a whole, appeals to the “prurient interest”; (2) the speech depicts or describes, in a “patently offensive” way, sexual conduct defined specifically by the applicable state law; and (3) the speech, taken as a whole, “lacks serious literary, artistic, political, or scientific value.” *Miller v. California*, 413 U.S. 15, 24 (1973). Speech is not legally obscene merely because it describes or refers to sex.

³⁵ *Cohen v. California*, 403 U.S. 15, 16, 26 (1971).

results in suppression of disfavored views.

Next, the ban on “[c]omments in support of or opposition to political campaigns or ballot measures” lacks any legitimate justification. It presumably derives from a Washington statute prohibiting public officials and employees from “us[ing] or authoriz[ing] the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition.”³⁶ But as the implementing regulation makes clear the statute “does not prevent a public office or agency from . . . making facilities available on a nondiscriminatory, equal access basis for political uses.”³⁷ The law therefore does not require the City to censor private citizens’ political advocacy in the public comment sections of its social media pages. It restricts only *City officials and employees* from using official social media accounts to endorse or oppose political campaigns or ballot measures. Extending the restriction to citizens’ comments unreasonably suppresses “[d]iscussion of public issues and debate on the qualifications of candidates”—speech that “occupies the core of the protection afforded by the First Amendment.”³⁸

The prohibition on “[p]lagiarized material, or material that violates intellectual property rights,” as well as “[c]ontent that violates a legal ownership interest of any other party” is also unreasonable. The rule provides no definite and objective standard for determining when material violates intellectual property rights or what degree of suspicion justifies removal. Importantly, the mere appearance of copyrighted material in a comment does not indicate whether it is *infringing*. The commenter may have permission to use it, or the use may be otherwise lawful, such as a “fair use” of the material.³⁹ The rule therefore risks suppressing a substantial amount of protected speech—including quotations, commentary, parody, and satire—beyond any legitimate interest the City might have in preventing infringement.⁴⁰ Further, the restriction on “plagiarized” material lacks definite, objective standards. Does “plagiarism” consist of copying text, copying ideas, or both? If the former, how substantial must the copying be to trigger the rule? Does the rule prohibit, for example, sharing an unattributed excerpt of an op-ed criticizing a proposed City ordinance? Will the City consider paraphrased text plagiarism if, in its judgment, it is too similar to the original? The unclear scope of the rule invites arbitrary enforcement.

The City also overreaches in banning comments that violate social media platforms’ terms of service. Social media companies are private actors and can adopt policies more restrictive than those the First Amendment allows the government to enact. Some companies such as Meta,

³⁶ Rev. Code Wash. § 29B.45.010.

³⁷ Wash. Admin. Code § 390-05-271(2).

³⁸ *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 346 (1995).

³⁹ To determine whether the fair-use doctrine applies, courts consider “(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.” *Fisher v. Dees*, 794 F.2d 432, 435 (9th Cir. 1986).

⁴⁰ As an alternative to this restriction, the City could rely on the Digital Millennium Copyright Act’s notice-and-counter-notice procedures, which allows copyright holders and those who post allegedly infringing material online to stake out their respective positions, while immunizing the qualifying host(s) of the material from liability. *See* 17 U.S.C. § 512.

which owns Facebook and Instagram, do exactly that.⁴¹ However, the government cannot adopt and enforce those private policies as *government* regulations.⁴²

Next, the ban on “[p]rivate, personal information published without consent” fails to give reasonable notice of what is prohibited. “Private, personal information” is undefined. Does it include only information made confidential by state or federal law? Or does it more broadly include information that could be deemed “personal,” such as someone’s name age, employer, or political affiliation? Without clearer guidelines, the rule is unconstitutionally vague and risks suppressing a substantial amount of speech on matters of public concern.

Lastly, while a restriction on off-topic comments is generally permissible in a limited public forum, the City must “‘draw a reasonable line,’ informed by ‘objective, workable standards,’ between what is considered on-topic and what is considered off-topic.”⁴³ An “indeterminate prohibition carries with it the opportunity for abuse.”⁴⁴ Officials tend to be more likely to view comments as irrelevant when they are critical. Clear guidelines guard against unconstitutional, viewpoint-based enforcement.

When it comes to protected speech that some find objectionable, “the remedy to be applied is more speech, not enforced silence.”⁴⁵ The City can respond to criticism, correct false information, or encourage civil dialogue, but it may not censor constitutionally protected speech. FIRE therefore calls on the City to revise its social media policy to comply with the First Amendment and commit to refraining from deleting comments, hiding comments, or blocking users over protected speech. We would be pleased to assist the City—at no cost—in ensuring its policies are constitutionally compliant.

We respectfully request a substantive response to this letter no later than November 12, 2026.

Sincerely,



Aaron Terr
Vice President of Public Advocacy, FIRE

Cc: Rebecca Mueller, City Attorney

⁴¹ As just one example, Meta has banned “claims that a violent tragedy did not occur,” speech that is plainly protected under the First Amendment. *Community Standards: Bullying and Harassment*, META, <https://transparency.meta.com/policies/community-standards/bullying-harassment> (last visited October 15, 2026); *see also United States v. Alvarez*, 567 U.S. 709, 723 (2012) (government lacks general authority to police truthfulness of public discourse).

⁴² *See e.g., Engdahl v. Kenosha*, 317 F.Supp 1133 (E.D. Wis. 1970) (rejecting city’s attempt to prevent minors from viewing “adult” movies, as determined by the MPAA, a private trade association); *Entm’t Software Ass’n v. Hatch*, 443 F.Supp 2d 1065 (D. Minn. 2006) (rejecting a state law that blocked people under 17 from renting or buying video games with certain ratings given by the ESRB, a private organization).

⁴³ *PETA v. Tabak*, 109 F.4th 627, 636 (D.C. Cir. 2024) (quoting *Mansky*, 585 U.S. at 16, 21) (internal citations omitted).

⁴⁴ *Id.* at 637 (quoting *Mansky*, 585 U.S. at 21).

⁴⁵ *Whitney v. California*, 274 U.S. 357, 377 (1927).