

October 29, 2026

Sammamish City Council
Sammamish City Hall
801 228th Avenue SE
Sammamish, WA 98075

Sent via U.S. Mail and Email (citycouncil@sammamish.us)

Dear Council Members:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech nationwide, is concerned by the City of Sammamish’s policy prohibiting “hate speech” on its Facebook page.¹ Because the restriction violates the First Amendment and is unconstitutionally vague, FIRE calls on the City to promptly remove it.

As the City is aware, 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 The Supreme Court recently made clear that 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 about any topic on its posts, the City has created a designated public forum,⁵ where any content-based restrictions must satisfy strict scrutiny—

¹ Privacy and legal info, *City of Sammamish - Government*, FACEBOOK, https://www.facebook.com/CityofSammamishWA/directory_privacy_and_legal_info (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) (“A designated public forum exists where the government intentionally opens up a nontraditional forum for public discourse.”) (citation and internal quotation marks omitted).

“that is, the restriction must be narrowly tailored to serve a compelling government interest.”⁶

Moreover, it is well-established that government officials may not discriminate against speech based on viewpoint in *any* type of forum.⁷ 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.”⁸

FIRE appreciates that the City’s policy largely tracks recognized First Amendment exceptions. However, the First Amendment makes no exception for “hate speech.” The City’s prohibition on “hate speech” is impermissibly viewpoint-based—it “reflects the Government’s disapproval of a subset of messages it finds offensive.”⁹ It is a “bedrock principle underlying the First Amendment” that officials cannot restrict speech simply because some find it “offensive or disagreeable.”¹⁰ As the Supreme Court has made clear, “[g]iving offense is a viewpoint.”¹¹ That principle also protects speech deemed hateful or bigoted.¹² Even a rule that “evenhandedly prohibits disparagement of all groups” constitutes viewpoint discrimination.¹³ 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.”¹⁴ While *some* comments the City considers “hate speech” may be subject to restriction because they fall within an unprotected category of speech, such as true threats,¹⁵ the City cannot ban speech merely because it purportedly expresses hate.

The “hate speech” ban is also unconstitutional for the independent reason that it is unreasonably vague. 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.”¹⁶ In other words, the City “must be able to articulate some sensible basis for distinguishing what may come in from

⁶ *Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009); *see also City of Boerne v. Flores*, 521 U.S. 507, 534 (1997) (stating strict scrutiny is the “most demanding test known to constitutional law”).

⁷ *Minn. Voters All. v. Mansky*, 585 U.S. 1, 11–12 (2018).

⁸ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

⁹ *Matal v. Tam*, 582 U.S. 218, 249 (2017) (Kennedy, J., concurring).

¹⁰ *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

¹¹ *Matal*, 582 U.S. at 243.

¹² *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).

¹³ *Matal*, 582 U.S. at 243.

¹⁴ *Am. Freedom Def. Initiative v. King Cnty.*, 904 F.3d 1126, 1130–31 (9th Cir. 2018).

¹⁵ “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).

¹⁶ *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

what must stay out,” using “objective, workable standards”¹⁷—not “subjective or overly general criteria.”¹⁸ The “need for specificity is especially important” where a regulation is a content-based, because vagueness has an “obvious chilling effect on free speech.”¹⁹

“Hate speech” is not an objective, workable standard. To the contrary, deciding whether a statement qualifies as “hate speech” requires an inescapably subjective judgment. For example, some characterize religious beliefs about gender or sexuality as “hate speech,” while others apply the same label to *criticism* of religion. And the City’s policy provides no definition, “guidance or other interpretive tools to assist in properly applying” it,²⁰ vesting moderators with unbridled discretion to decide what speech to restrict.

Notably, a federal court struck down as unconstitutionally vague a policy prohibiting speech that “stigmatizes or victimizes an individual on the basis of race, ethnicity, religion, sex,” or another protected characteristic.²¹ The court explained that the terms “stigmatize” and “victimize” “elude precise definition” and that the policy provided no “principled way to distinguish sanctionable from protected speech.”²² The same reasoning applies here.

The Supreme Court has explained that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”²³ When it comes to protected speech that some find objectionable, “the remedy to be applied is more speech, not enforced silence.”²⁴ FIRE therefore calls on the City of Sammamish to revise its social media policy to eliminate the unconstitutional ban on “hate speech.”

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: Debbie Beadle, Chief of Staff, City Manager’s Office
Kari L. Sand, City Attorney

¹⁷ *Minn. Voters All. v. Mansky*, 585 U.S. 1, 16, 21 (2018).

¹⁸ *Hopper v. City of Pasco*, 241 F.3d 1067, 1077 (9th Cir. 2001).

¹⁹ *Sypniewski v. Warren Hills Reg’l Bd. of Educ.*, 307 F.3d 243, 266 (3d Cir. 2002).

²⁰ *Marshall v. Amuso*, 571 F. Supp. 3d 412, 424 (E.D. Pa. 2021).

²¹ *Doe v. Univ. of Mich.*, 721 F.Supp. 852 (E.D. Mich. 1989).

²² *Id.* at 867; *see also Cohen v. California*, 403 U.S. 15, 25 (1971) (explaining that First Amendment strips government officials of authority to ban speech deemed offensive because they “cannot make principled distinctions in this area”).

²³ *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

²⁴ *Whitney v. California*, 274 U.S. 357, 377 (1927).