FIRE
Foundation for Individual Rights and Expression

November 2, 2026

Iron River City Council
801 W. Adams Street
Iron River, MI 49935

Sent via U.S. Mail and Electronic Mail (dood@ironriver.org; mayorpowell@ironriver.org; clements@ironriver.org; ronjo@ironriver.org; burdick@ironriver.org)

Dear Iron River City Council:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech nationwide, is concerned by Iron River City Council's Public Comment Procedures and its enforcement of them against Timmothy Ballinger. As the First Amendment bars 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 City Council to bring its policies and practices into constitutional compliance.

Our concerns arise from Mr. Ballinger's removal from the July 15, 2026 City Council meeting following his remarks involving Mayor Rodney Dood. After Mr. Ballinger began his public comment, Mayor Dood asked if it related to the agenda. Mr. Ballinger stated, "if you would shut your mouth and listen to me while I speak," to which the mayor replied, "That's your first warning. Do not talk to me like that."[1] Mr. Ballinger continued, explaining how his remarks related to the agenda and asking why certain parking lots were subject to specific approval procedures while others were not. When Mayor Dood began to answer, Mr. Ballinger interjected, "I don't want to hear your answer. This is my time to talk, not yours, please be quiet." Mr. Ballinger continued, but the mayor eventually cut in to ask, "Alright, anything else on the agenda?" Mr. Ballinger, whose allotted speaking time had yet to expire, stated, "Please do not interrupt me when I'm talking."

At that moment, a police officer said, "Tim, let's go," and removed Mr. Ballinger from the meeting. Mr. Ballinger objected, as others in the room said he was being "disrespectful." After bringing Mr. Ballinger outside, the officer told him he "can't be talking to the mayor like that."

Iron River's Public Comment Procedures (the "Policy") list the following requirements:

[1] Audio of City Council Regular Meeting (July 15, 2026) (on file with author).

> Public comment shall not be disruptive, nor contain any profanity, racial, ethnic, religious, sexual, or national origin slurs or overtones. Public comment shall not contain defaming or slanderous personal attacks. All public comments shall be directed to the City Council. The City Council will not respond during public comment.
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> Any violation of Public Comment Procedures shall constitute a breach of the peace. If a member of the public engages in such breach of the peace, they may be ordered to be seated immediately, or removed from the meeting, by the mayor.

The City Council meeting agenda also states that the public comment period during which Mr. Ballinger spoke will be "[r]egarding Items on the Agenda" and "limited to three (3) minutes, which will begin when the speaker approaches the podium."[2]

Mr. Ballinger's removal arguably violated the Policy itself,[3] but more to the present point, his removal infringed his First Amendment rights, and the Policy unconstitutionally imposes vague, overbroad, and viewpoint-discriminatory speech restrictions.

The First Amendment protects speech by members of the public at government meetings.[4] By their nature, public comment periods are, at minimum, limited public forums, meaning the government may impose only viewpoint-neutral restrictions that are reasonable in light of the forum's purpose.[5] For example, the City Council may, as it has done, adopt reasonable time limits on comments, because time limits are a viewpoint-neutral restriction that is reasonable in light of the need for Council meetings to cover a wide range of issues within a limited period of time. The Council can likewise prohibit genuinely disruptive conduct—such as speaking when not recognized or making true threats.[6] But it may not restrict comments because they are critical of government officials or employees, or when a speaker's "opinion or perspective . . . is the rationale for the restriction."[7] Neither criticism nor "disrespect" are

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[2] *Iron River City Council Regular Meeting Agenda*, Public Comment, CITY OF IRON RIVER (July 15, 2026), https://ironriver.org/wp-content/uploads/2026/07/26-7-15-IRCCAGENDA.pdf (last visited Oct. 29, 2026).

[3] Mr. Ballinger's comments did not fall within any of the categories the Policy lists as permitting removal. The Policy also prohibits the City Council from responding to comments, yet the mayor interrupted Mr. Ballinger and attempted to answer his question. Finally, a police officer who initiated Mr. Ballinger's removal despite the Policy granting that authority to the mayor alone.

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

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

[6] "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, that "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).

[7] *Rosenberger*, 515 U.S. at 829.

inherently disruptive,[8] and officials cannot stretch the meaning of disruption to restrict constitutionally protected speech. Yet the Policy violates these First Amendment principles in several ways.

Profanity, personal attacks, and offensive slurs or overtones

"Freedom to criticize public officials and expose their wrongdoing is at the core of First Amendment values."[9] To the extent Mr. Ballinger suffered removal for being "disrespectful" or making a "personal attack" on the mayor, his removal unconstitutionally discriminated against him based on viewpoint by selectively targeting speech expressing a negative or critical perspective. Federal courts across the country have invalidated rules banning "personal attacks" or "personally directed," "antagonistic," "abusive," "derogatory," "offensive," "rude," or "insulting," public comments.[10] Shutting down critical speech is not only unlawful, but it undermines 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 sometimes unpleasantly sharp attacks on government and public officials."[11]

The Policy's ban on "profanity" and "racial, ethnic, religious, sexual, or national origin slurs or overtones" is likewise unconstitutional. These restrictions contradict the "bedrock principle underlying the First Amendment" that officials cannot restrict speech simply because some may find it "offensive or disagreeable."[12] Even if the government believes certain words are unnecessary to convey a speaker's message, they remain constitutionally protected.

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[8] *See Norse v. City of Santa Cruz*, 629 F.3d 966, 976 (9th Cir. 2010) ("Actual disruption means actual disruption. It does not mean constructive disruption, technical disruption, virtual disruption, nunc pro tunc disruption, or imaginary disruption. The City cannot define disruption so as to include non-disruption."); *see also Gault v. City of Battle Creek*, 73 F. Supp. 2d 811, 814 (W.D. Mich. 1999) ("It is well established that a citizen addressing a city governmental body in a limited public forum may be stopped from speaking if the speech ... 'disrupts, disturbs or otherwise impedes the orderly conduct of the Council meeting,' so long as the speaker is not 'stopped from speaking because the moderator disagrees with the viewpoint he is expressing....'" (quoting *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990))).

[9] *Boddy v. Grech*, 178 F.4th 264, 274 (6th Cir. 2026) (quoting *Barrett v. Harrington*, 130 F.3d 246, 263 (6th Cir. 1997)).

[10] *See, e.g., Moms for Liberty - Brevard Cnty. v. Brevard Cnty. Pub. Schs.*, 118 F.4th 1324 (11th Cir. 2024) (school board's restrictions on "abusive," "personally directed," or "obscene" comments were 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" 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*, 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 comment protocol that "attacks of a personal nature . . . will not be allowed or tolerated" constituted evidence of viewpoint discrimination).

[11] *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

[12] *Texas v. Johnson*, 491 U.S. 397, 414 (1989); *see also Matal v. Tam*, 582 U.S. 218, 243 (2017); *Iancu v. Brunetti*, 588 U.S. 388, 394 (2019) (determining whether something is "immoral" or "scandalous" is viewpoint-based as it "distinguishes between two opposed sets of ideas: those aligned with conventional moral standards and

With respect to discriminatory "slurs or overtones," the Supreme Court has made clear that even a restriction that "evenhandedly prohibits disparagement of all groups" is viewpoint discriminatory, because "[g]iving offense is a viewpoint."[13] Although state and federal laws prohibit discrimination in certain contexts (the legal standard for which requires proving conduct beyond speech and harm beyond offense),[14] speech involving "slurs or overtones" alone, even when relating to or aimed at an otherwise protected group, is protected.[15]

As for the Policy's ban on profanity, the Supreme Court explained more than a half century ago, when it struck down the conviction of a man who wore a "Fuck the Draft" jacket in a county courthouse, "one man's vulgarity is another's lyric," and "words are often chosen as much for their emotive as their cognitive force."[16] The "First Amendment mandates that we presume that speakers, not the government, know best both what they want to say and how to say it."[17]

Finally, restricting language deemed offensive during a period specifically reserved for voicing matters of public concern raises especially grave constitutional issues. "[S]peech concerning public affairs is more than self-expression; it is the essence of self-government."[18] As such, it is "at the heart of the First Amendment's protection."[19]

Defamatory comments

That the Policy limits its ban on personal attacks to those that are "defaming or slanderous" does not make it constitutional. Even assuming this restriction is meant to track the legal standard, the City Council may not appoint itself the arbiter of what constitutes defamation. That question, which requires a complex legal analysis, is assigned to courts to perform under

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those hostile to them; those inducing societal nods of approval and those provoking offense and condemnation.").

[13] *Matal*, 582 U.S. at 243.

[14] *See, e.g., Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 308 (2025) ("Title VII's disparate-treatment provision bars employers from intentionally *discriminating* against their employees on the basis of race, color, religion, sex, or national origin.") (emphasis added); *Muldrow v. City of St. Louis*, 601 U.S. 346, 347 (2024) ("To make out a Title VII discrimination claim, a [plaintiff] must show some harm respecting an *identifiable term or condition* of employment.") (emphasis added). *Contra 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); *Am. Freedom Def. Initiative v. King Cnty.*, 904 F.3d 1126, 1130–31 (9th Cir. 2018) (ordinance banning "[a]dvertising that contains material that demeans or disparages an individual, group of individuals or entity" constituted viewpoint discrimination in violation of the First Amendment).

[15] *See Matal*, 582 U.S. at 246 ("Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express 'the thought that we hate.'" (quoting *United States v. Schwimmer*, 279 U.S. 644, 655 (1929) (Holmes, J., dissenting))).

[16] *Cohen v. California*, 403 U.S. 15, 25–26 (1971).

[17] *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 790–91 (1988).

[18] *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964).

[19] *Snyder v. Phelps*, 562 U.S. 443, 451–52 (2011) (citation modified).

constitutionally prescribed standards.[20] The Policy's prohibition on "defaming or slanderous" comments removes that determination from courts and their attendant procedural safeguards, and places it with a political body, whose members, unlike the courts, may have "[no] regard for such niceties as whether the statement, though critical, is true, or whether, though false, is privileged, or whether, though couched as fact (e.g., 'X is a racist'), is legally an expression of opinion rather than a statement of fact and hence not actionable[.]"[21] Therefore, the Council's enforcement of the rule is likely to turn on personal assessments about whether a speaker's statement is false, unfair, or offensive—none of which, standing alone, are constitutionally permissible reasons to restrict speech.[22] And the risk of biased enforcement is especially acute when Council members must assess whether criticism of their own conduct is defamatory.

Overbreadth

Along with its fatal viewpoint discrimination, the Policy is also unconstitutionally overbroad as it "prohibits a substantial amount of protected speech . . . not only in an absolute sense, but also relative to the [Policy's] plainly legitimate sweep."[23] Federal courts have routinely blocked enforcement of bans on "abusive," "inappropriate," "offensive," and "personally directed" comments because they encompass a "broad array of constitutionally protected speech."[24]

Similarly, while the Council may be able to bar some speech it deems "profane," "slanderous," or a "personal attack" if it actually disrupts a meeting or is unrelated to the meeting's purpose, the Policy has no language limiting enforcement to such cases. And there are many instances in which a speaker may use the Policy's prohibited language during public comment in a non-disruptive manner. A speaker might recite a banned term while quoting an elected official or referencing language in a news story. Or a speaker might use profanity and slurs less politely, but unaccompanied by disruption.[25] Forcing speakers to self-censor undermines the impact of

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[20] Those standards require proof of (1) a false statement of fact, as opposed to a true statement or opinion; (2) unprivileged publication of that statement to a third party; (3) fault, which in the case of speech about a public figure or official means the speaker knew the statement was false or recklessly disregarded the truth; and (4) damages. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974); *Smith v. Anonymous Joint Enter.*, 487 Mich. 102, 793 N.W.2d 533 (2010).

[21] *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 728 n.6 (C.D. Cal. 1996).

[22] *United States v. Alvarez*, 567 U.S. 709, 718 (2012) (holding there is no "general exception" to the First Amendment for "false statements," which "comports with the common understanding that some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation").

[23] *United States v. Williams*, 553 U.S. 285, 292 (2008).

[24] *See 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); *see also Merriott v. City of Bossier City*, 179 F.4th 393, 405 (5th Cir. 2026) (prohibition on "personal remarks" is unconstitutionally overbroad); *Acosta v. City of Costa Mesa*, 718 F.3d 800, 816 (9th Cir. 2013) (provision banning "disorderly, insolent, or disruptive behavior" is unconstitutionally overbroad "because it unnecessarily sweeps a substantial amount of non-disruptive, protected speech within its prohibiting language").

[25] *See Johnson*, 491 U.S. at 414; *Baumgartner v. United States*, 322 U.S. 665, 673–74 (1944) (freedom of speech 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").

the message they intend to convey. The City Council cannot conflate disruption with the mere use of provocative or controversial language.

Vagueness

The Policy also suffers from unconstitutional vagueness as speakers "of common intelligence must necessarily guess at its meaning,"[26] and it lacks "explicit standards" to prevent "arbitrary and discriminatory enforcement."[27] To be sure, governments necessarily possess "some degree of discretion" in limited public forums "in how to apply a given policy," but "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."[28] Undefined terms such as "overtones," or "slanderous personal attacks" not expressly tied to the legal standard for defamation, are "irreparably clothed in subjectivity" with interpretations that vary from "speaker to speaker, and listener to listener."[29] And the Policy contains no "guidance or other interpretive tools to assist in properly applying" these terms, unconstitutionally allowing City Council members' personal views to shape enforcement.[30]

Conclusion

When it comes to protected speech that some listeners may find objectionable, "the remedy to be applied is more speech, not enforced silence."[31] FIRE calls on the City Council to take steps immediately to bring its Public Comment Procedures into First Amendment compliance.

We stand ready to assist—at no cost—in crafting policies that respect constitutional limits and preserve order at meetings, as we have done with other local governments. We respectfully request a substantive response to this letter no later than November 16, 2026.

Sincerely,



Zoë Smith
Senior Program Counsel, Public Advocacy

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

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

[28] *Marshall*, 571 F. Supp. 3d at 425–26 (quoting *Minn. Voters All. v. Mansky*, 585 U.S. 1, 21–22 (2018)) (internal quotation marks omitted). 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)).

[29] *Id.*

[30] *Id.*

[31] *Whitney v. California*, 274 U.S. 357, 377 (1927).