FIRE
Foundation for Individual Rights and Expression

February 3, 2026

Edward D. Plato
Corporation Counsel, City of Taylor
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Taylor City Council
23555 Goddard Road
Taylor, Michigan 48180

Sent via U.S. Mail and Electronic Mail (eplato@platolawfirm.com)

Dear Mr. Plato and Members of the Taylor City Council:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech nationwide, is concerned that the Taylor City Council refused to read a disabled citizen's submitted comment during the public comment period of a Council meeting after unilaterally deeming it "defamatory." Whether speech is defamatory, and therefore outside the First Amendment's protection, is a legal determination reserved to courts—not a judgment local legislative bodies may make to shut down speech in advance. By suppressing the submitted comment, the Council violated the First Amendment.

Our concerns arise from the City Council's May 6, 2025, meeting. Two days earlier, Charles Blackwell, who is disabled, emailed the Council requesting that his written public comment be read aloud during the meeting pursuant to the Americans with Disabilities Act. His submitted comment stated:

> Good Evening Everyone: Mayor Woolley has turned into corrupt Mayor Rick Sollars. There are many indicators that corruption has possibly influenced Mayor Woolley's decision to arbitrarily award the towing contract to JT Crova towing company.[1]

[1] Email from Charles Blackwell to Tiarra Swain, Executive Assistant, Taylor City Council (May 4, 2025, 4:44 PM) (on file with author). The Council's website states: "Those needing special accommodations to attend City Council meetings may contact the Council Secretary to make arrangements. Alternately, those who would like to submit a question to be read/discussed during a meeting may submit their questions/concerns to the Council Secretary at least one day prior to a regularly scheduled meeting, or live during a meeting via the e-comments option." *City Council*, TAYLOR, https://www.cityoftaylor.com/750/City-Council.

The Council refused to read Mr. Blackwell's comment. City attorney Ed Plato later told Mr. Blackwell: "No discrimination occurred. Your 'comment' was not read because it is defamatory and defamation is not protected by the First Amendment and will not be republished during a Council meeting."[2] That justification is legally unsound.

When a government body allows public comments at its meetings, it creates, at minimum, a limited public forum, where any restrictions on speech must be viewpoint-neutral and reasonable in light of the forum's purpose.[3] The Council therefore may not censor criticism of city officials or otherwise restrict public comments "when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."[4] The government likewise may not silence speech on the ground that officials believe it to be false or unfounded, as our "constitutional tradition stands against the idea that we need Oceania's Ministry of Truth."[5]

The Council cannot evade these constitutional limits by unilaterally labeling the comment "defamatory." A board or council policy prohibiting defamatory speech is constitutionally infirm in leaving that determination not to a court, with all attendant procedural safeguards, but "to one person" such as the president of a board, "without 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 . . . ."[6]

Rather, whether a comment is defamatory, and thus outside the First Amendment's protection, is a judgment that can be rendered only in an adversarial judicial proceeding,[7] 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) an unprivileged communication of the statement to a third party; (3) fault, which in the case of speech about a public figure or official (such as a mayor) means the speaker knew the statement was false or recklessly disregarded the truth; and (4) harm to the defamed individual.[8] The Council has no authority to replace this process

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[2] Email from Ed Plato, Corporation Counsel, City of Taylor, to Charles Blackwell (May 8, 2025, 6:28 PM) (on file with author).

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

[4] *Id.*; *see also Ison v. Madison Local Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 894–95 (6th Cir. 2021) (invalidating bans on "antagonistic," "abusive," and "personally directed" public comments at local government meetings, explaining that such restrictions impose "impermissible viewpoint discrimination" by prohibiting nondisruptive speech "purely because it disparages or offends").

[5] *United States v. Alvarez*, 567 U.S. 709, 723 (2012).

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

[7] *Id.*; *Ghanam v. Does*, 845 N.W.2d 128, 143 (Mich. App. 2014) ("Courts must examine the statements and the circumstances under which they were made to determine whether the statements are subject to First Amendment protection. Whether a statement is actually capable of defamatory meaning is a preliminary question of law for the court to decide.").

[8] *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974); *Mitan v. Campbell*, 706 N.W.2d 420, 421 (Mich. 2005).

with its own single-sentence declaration that a comment is "defamatory" to rationalize censoring it.

In doing exactly that, the Council not only violated Mr. Blackwell's rights, it imposed an unlawful prior restraint—the "most serious and the least tolerable infringement on First Amendment rights."[9] As the Supreme Court has made clear, any time the government "den[ies] use of a forum in advance of actual expression," it imposes a prior restraint.[10] That is what happened here: Mr. Blackwell was denied use of the public forum established by the Council to allow members of the public to speak. Importantly, denial of access to a public forum constitutes a prior restraint even if the speaker remains free to speak elsewhere.[11]

There is a "heavy presumption" against prior restraints' constitutionality.[12] A system of prior restraint violates the First Amendment if it lacks the requisite procedural safeguards, including the initiation of judicial proceedings by the government to prove that the speech is unprotected.[13] The Council took no such action here. Instead, it issued its own ipse dixit, thereby violating the First Amendment.

Any concern that the Council or its members could face liability for reading a disabled citizen's public comment is unfounded—even if the comment is later determined to be defamatory in a civil action. The Council and its members enjoy absolute immunity from tort liability for the exercise or discharge of government functions.[14] Reading submitted public comments to accommodate a speaker's disability in the course of Council proceedings is plainly an exercise of a government function, for which no tort liability can attach.[15] That rule makes good sense. Exposing Council members to possible defamation liability in such circumstances could create

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[9] *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976); *see also Baca*, 936 F. Supp. at 728 n.6.

[10] *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975).

[11] *Id.* at 556.

[12] *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992).

[13] *Se. Promotions,* 420 U.S. at 559–60.

[14] Mich. Comp. Laws § 691.1407(1), (2); *State Farm Fire & Cas. Co. v. Corby Energy Servs.*, 722 N.W.2d 906, 909 (Mich. App. 2006), (a "[c]ity, as a 'political subdivision,' MCL 691.1401(b), is a 'governmental agency' for purposes of governmental immunity"); *see also Am. Transmissions, Inc. v. Attorney General*, 560 N.W.2d 50 (Mich. 1997) (Michigan attorney general was absolutely immune from liability for defamation for calling plaintiffs "crooks" during a press conference, as he was responding to questions regarding an official investigation by his department and was thus acting within the scope of his executive authority).

[15] A "governmental function is an activity which is expressly or impliedly mandated or authorized by constitution, statute, or other law. This definition of 'governmental function' is to be broadly applied. It only requires that there be some constitutional, statutory or other legal basis for the activity in which the agency was engaged." *Adam v. Sylvan Glynn Golf Course*, 494 N.W.2d 791, 793 (Mich. App. 1992) (internal citations omitted). The Council's public comment procedure has a sound legal basis. *See* Mich. Comp. Laws § 15.263(5) ("A person must be permitted to address a meeting of a public body under rules established and recorded by the public body"); 42 U.S.C.S. § 12132 ("[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.").

a powerful incentive to suppress public participation based on speculative tort concerns—precisely the type of harm Michigan's doctrine of absolute immunity is designed to prevent.

Defamation law is enforced through post-publication civil actions in court, with procedural safeguards and burdens of proof that incorporate First Amendment standards, particularly where speech concerns public officials and matters of public concern. The Council has no authority to bypass this framework and impose a prior restraint on whatever political criticism it believes to be false.

Separately, in the enclosed letter dated February 6, 2025, FIRE raised concerns about the Council's unconstitutional public comment rules established by Council Resolution No. 11.680-17. Since that time, the City's website no longer appears to display the resolution or other documentation setting forth the Council's public comment policy. It is unclear whether the resolution and rules cited in our letter remain in effect or have been rescinded or amended.

FIRE requests a substantive response no later than February 17, 2026, confirming (1) the Council will no longer censor public comments based on its unilateral determination that they are "defamatory," and (2) whether Council Resolution No. 11.680-17 remains operative and, if not, identify the current rules governing public comment at Council meetings and make them readily accessible to the public.

Sincerely,

Aaron Terr
Director of Public Advocacy

Encl.

FIRE
Foundation for Individual Rights and Expression

February 6, 2025

Taylor City Council
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Sent via U.S. Mail and Electronic Mail (dgeiss@ci.taylor.mi.us; jbrandana@ci.taylor.mi.us; awinton@ci.taylor.mi.us; cjohnson@ci.taylor.mi.us; lrose@ci.taylor.mi.us; tdaniels@ci.taylor.mi.us)

Dear Taylor City Council:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, writes today to urge the Taylor City Council to review and revise its public comment policies that infringe the rights of its residents. Both a 2021 federal appellate court ruling and the recent settlement of FIRE's First Amendment lawsuit against the City of Eastpointe, Michigan, underscore the need for the Taylor City Council to make the necessary policy revisions.

The First Amendment protects speech by members of the public at government meetings.[1] The public comment period is, at a minimum, a limited public forum, which means the government may restrict the content of commenters' speech only when those restrictions are viewpoint-neutral *and* reasonable in light of the forum's purpose.[2] While municipal bodies can prohibit genuinely disruptive conduct—such as speaking out of turn or making true threats[3]—they cannot stretch the meaning of disruption to encompass constitutionally protected speech.

The U.S. Court of Appeals for the Sixth Circuit—whose decisions bind the Taylor City Council—made this clear in 2021 when its decision in *Ison v. Madison Local School District Board of Education* invalidated bans on "antagonistic," "abusive," and "personally directed" public comments at local government meetings.[4] As the Sixth Circuit explained,

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

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

[3] A "true threat" is a statement through which "the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003).

[4] 3 F.4th 887, 895 (6th Cir. 2021).

such restrictions impose "impermissible viewpoint discrimination" by prohibiting nondisruptive speech "purely because it disparages or offends."[5]

FIRE put those principles into practice when it filed suit on behalf of four Eastpointe, Michigan residents against the city and its mayor, Monique Owens, after she repeatedly prohibited them from criticizing her during the public comment period of City Council meetings. The November 2022 suit challenged not only the constitutionality of Mayor Owens' actions but also Eastpointe's policy barring public comments "directed" at an individual council member.

In April 2024, Eastpointe reached a settlement with the residents that required the City Council to refrain from enforcing its unconstitutional ban on public comments directed at council members; to allow members of the public to criticize Eastpointe officials; to pay damages and attorneys' fees totaling $83,000; and to apologize to its censored residents.[6] Eastpointe citizens are now free to express even severe criticism of public officials at City Council meetings without facing unlawful censorship.

As the Taylor City Council maintains similarly unconstitutional public comment policies, FIRE strongly urges the Council to reform these policies and avoid costly and time-consuming litigation.

In particular, the Council prohibits "personally abusive language" and "personal impertinent remarks slanderous or profane remarks to any member of the Council, staff or general public."[7] Fortunately, the Council can easily take the necessary steps to remedy this policy's legal shortcomings and safeguard its residents' First Amendment rights. FIRE would welcome the opportunity to work with the Council toward full First Amendment compliance, as we have successfully done with local governments in Michigan and across the country.[8]

Thank you for your attention to this matter. We look forward to hearing from you.

Sincerely,

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[5] *Id.* at 894; *see also Matal v. Tam*, 582 U.S. 218, 243 (2017) ("Giving offense is a viewpoint."); *Rosenberger*, 515 U.S. at 829 (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").

[6] *See VICTORY: Michigan town declares Sept. 6 'First Amendment Day' after FIRE sues its mayor for shouting down residents*, FIRE (Apr. 17, 2024), https://www.thefire.org/news/victory-michigan-town-declares-sept-6-first-amendment-day-after-fire-sues-its-mayor-shouting-0.

[7] Regular City Council Meetings Rules and Procedures, Resolution No. 11.680-17, CITY OF TAYLOR, https://www.cityoftaylor.com/DocumentCenter/View/4559/City-Council-Rules-and-Procedures-2017-PDF.

[8] *See, e.g.*, Carrie Robison, *VICTORY: Michigan city recognizes First Amendment right to 'demean' government officials*, FIRE (Jan. 17, 2024), https://www.thefire.org/news/victory-michigan-city-recognizes-first-amendment-right-demean-government-officials.

Aaron Terr
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