



# FIRE

Foundation for Individual  
Rights and Expression

November 6, 2023

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*Sent via Electronic Mail (nwackerly@awblawfirm.com)*

Dear Mr. Wackerly:

Thank you for sending FIRE the proposed amendment to the Rules of Commission set forth in Section 2-26 of the Bay City Code of Ordinances. We are pleased that the proposed amendment would remove the city's authority to call to order or eject public commenters on the sole basis that their comments are "derogatory" and "directed at another person"; "demeaning" to city officials, officers, or employees; or "vulgaries." However, we recommend the following revisions for clarification and to best protect against unconstitutional application of the rules.

**Make clear Rule 17's relevance requirements do not apply to public input.**

As amended, Rule 12 of the Rules of Commission would allow speakers to "address any topic" during the "public input" period, which is distinct from the "public hearing" period that addresses certain agenda items. However, Rule 17 would authorize the city to call to order "any person" for "failing to be relevant to the current topic of the meeting or public hearing." As "meeting" could be read to encompass the entire City Commission meeting, including the public input period, FIRE recommends revising this language to clarify that Rule 17's relevance requirements do not apply to public input.

**Remove superfluous language concerning "personal attacks" and "insults."**

As amended, Rule 17 would also authorize the city to call to order any public commenter for "making personal attacks or insults directed at another person or group of people and unrelated to the topic of discussion or public hearing." FIRE recommends Bay City eliminate this language as redundant of the above-mentioned provision that would prohibit "failing to be relevant to the current topic of the meeting or public hearing."

To be clear, FIRE does not object to Bay City prohibiting irrelevant comments during public hearings. But the general prohibition on irrelevant comments during public hearings would adequately address the subset of irrelevant comments that contain "personal attacks or

insults.” Moreover, language that singles out one category of irrelevant comments based on viewpoint risks chilling constitutionally protected speech and increases the risk that city officials will selectively apply the relevance requirement to disfavored viewpoints.<sup>1</sup>

FIRE appreciates Bay City’s attention to our concerns. We recommend the city adopt the proposed amendment after incorporating our recommended revisions.

Sincerely,



Aaron Terr  
Director of Public Advocacy

Cc: Dana L. Muscott, City Manager  
City of Bay City Commission

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<sup>1</sup> As explained in FIRE’s previous correspondence, restricting speech because it criticizes, demeans, attacks, or insults an individual violates the First Amendment’s bar on viewpoint discrimination. *See, e.g., Matal v. Tam*, 582 U.S. 218, 243 (2017); *Ison v. Madison Loc. Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 894 (6th Cir. 2021).