



December 11, 2024

Nishith Patel, President
Edison Township Council
100 Municipal Boulevard
Edison, New Jersey 08817

Sent via U.S. Mail and Electronic Mail (npatel@edisonnj.gov; lrainone@edisonnj.gov; mayorjoshi@edisonnj.org; rbrescher@edisonnj.gov; jcoyle@edisonnj.gov; apatil@edisonnj.gov; jpoyner@edisonnj.gov; ashmuel@edisonnj.gov; mharris@edisonnj.gov)

Dear President Patel and Council Members:

The Foundation for Individual Rights and Expression (FIRE) is concerned by Edison Township's constitutionally defective public decorum ordinance for Council meetings. As a nonpartisan nonprofit dedicated to defending freedom of speech, FIRE is committed to ensuring Americans can speak freely during the public comment periods of local government meetings.¹ Because the decorum ordinance is unreasonable, vague, viewpoint discriminatory, and overbroad, FIRE calls on the Council to immediately repeal or amend it to eliminate its unconstitutional defects.

Our concerns arise from Ordinance 2239-2024, which sets forth a non-exhaustive list of what the Council will consider disruption of public meetings, warranting first a warning, then forfeited time, and then ejection: "the utterance of loud, physically threatening, abusive, or excessively vulgar language," "patently offensive or abusive language," "wearing of costumes or non-medically necessary masks while addressing the Council," and "use of props while addressing the Council."²

During the public comment period of the Council's November 25 meeting, attorney and Edison resident Joel Bassoff initially criticized a separate ordinance, which shortened the public comment period.³ In a symbolic gesture, he tore up a copy of that ordinance and then held up a copy of the U.S. Constitution, stating, "Every member of the council took a solemn oath to uphold

¹ I write to you not only as a First Amendment attorney on behalf of FIRE, but as former New Jersey resident with close ties to the Edison community. I graduated from Bishop George Ahr High School on Oak Tree Road and still patronize many of the town's small-business retail and dining establishments with friends and family who are your constituents.

² EDISON, N.J., ORDINANCES ch. 2, § 2-2 (2024) viewable at <https://ecode360.com/ED0440/laws/LF2216266.pdf>.

³ Edison TV, *Council Combined Meeting of November 25, 2024*, YOUTUBE, <https://www.youtube.com/live/5CYmRRxGUfc?t=1776s>.

the Constitution. I'm holding up a copy of the Constitution to remind you of that oath.”⁴ Council President Nishith Patel interrupted Bassoff, warning, “This will be served as a prop, as last discussed in the last meeting. If you continue to use it as a prop, the Constitution, then we will act — take this as a warning. If you continue, you will forfeit your time.” Bassoff replied, “I’m sorry, I’m not putting down the U.S. Constitution.” Patel ordered police to remove Bassoff, but he returned to his seat without incident.

Another Council member questioned how Patel could enforce an ordinance that had yet to be adopted, and Patel stated he had discretion as President to establish and enforce meeting rules and had given the public notice of these rules in previous meetings.⁵ When Ordinance 2239-2024 came up for discussion, Bassoff returned to the lectern to criticize it as unconstitutional: “So if the Council passes Ordinance 2239 attempting to control decorum, the council will have adopted an unconstitutional ordinance.”⁶ He continued, “Your effort to ban costumes, non-medical masks, and props violates the free speech guarantee of the First Amendment to the U.S. Constitution.” Bassoff said the Council was seeking to avoid “being embarrassed” by “trying to ban the people who humiliate [them].”⁷ He continued: “The best way to avoid humiliation is to stop doing stupid things like trying to clamp down on constitutionally protected symbolic speech . . . And if you get sued, you will lose.” He then raised a small American flag “to represent the constitutional values that we should be loyal to.”⁸ At this point, Patel issued Bassoff another warning, which set off another contentious exchange ending with Patel summoning the police to eject Bassoff.⁹

The adopted ordinance, on its face and as enforced against Bassoff, violates the First Amendment rights that your constituents exercise when they publicly comment at township meetings.¹⁰ A council meeting is, at a minimum, a limited public forum,¹¹ which means the Council may restrict the content of commenters’ speech only when those restrictions are viewpoint-neutral *and* reasonable in light of the forum’s purpose.¹² The Constitution also strips Edison of the authority to promulgate or enforce vague or overbroad speech restrictions. Edison’s adoption and enforcement of the decorum ordinance violates all these prohibitions. The Council may, for example, limit a public comment session to agenda items. But it may not, among other things, restrict criticism of ordinances or other speech based on the viewpoint it expresses.¹³ Neither may

⁴ *Id.*

⁵ Edison TV, *Council Combined Meeting of November 25, 2024*, YOUTUBE, <https://www.youtube.com/live/5CYmRRxGUfc?t=1896s>.

⁶ New Brunswick Today, *Police Remove Resident For Holding USA Flag During Speech - 11/25/2024*, YOUTUBE, <https://www.youtube.com/watch?v=aaHT8EmRZoY>.

⁷ Bassoff was referencing an earlier October meeting where attendees wore masks and costumes to mock the Council. Erin Vogt, *NJ Town Resorts to Banning U.S. Flag as Council Meetings Get Increasingly Wacky*, N.J. 101.5 (Nov. 27, 2024), <https://nj1015.com/edison-bans-props-including-flags-sets-timelimit-at-town-council-meetings>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *See, e.g., City of Madison, Joint Sch. Dist. No. 8 v. Wisconsin Emp. Rels. Comm’n*, 429 U.S. 167, 174–76 (1976) (recognizing the public’s right to speak at school board meetings “when the board sits in public meetings to conduct public business and hear the views of citizens”).

¹¹ *Galena v. Leone*, 638 F.3d 186, 199 (3rd Cir. 2011).

¹² *See Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995).

¹³ *Id.* (“Viewpoint discrimination is . . . an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the

the Council promulgate or enforce vague or overbroad speech restrictions, which provide government officials with a dangerous tool to shut down criticism and dissent. Edison Township Council's ordinance and its actions violate all these prohibitions and are incompatible with the "free flow of ideas and opinions on matters of public interest and concern" that lies at "the heart of the First Amendment."¹⁴

I. The Ordinance Is Unconstitutionally Vague and Can Lead to Arbitrary Results

The provisions banning "the utterance of loud, physically threatening, abusive, or excessively vulgar language," "patently offensive or abusive language," "wearing of costumes or non-medically necessary masks while addressing the Council," and "use of props while addressing the Council" are unconstitutionally vague.¹⁵ These terms are largely undefined and provide the Council with excessive discretion to decide what speech to allow.

Are petitions or pictures props when used by speakers as visual aids? What if a speaker first reads from them? What if a speaker wears a political button? Likewise, is it a costume if someone wears cultural attire like a shawl or a headdress? A uniform? A clown nose? Under our understanding of the ordinance, each of these may be expressive and may not violate the ordinance unless they are used by the speaker to illustrate the message they intend to impart to the Council. For example, a speaker who wears a religious item, such as a rosary, is engaged in expressive conduct, but the item may only be a prohibited "prop" per the Ordinance if the speaker intends it to illustrate their position on the subject matter of the discussion.

And when does a comment cross the line from merely critical or somewhat objectionable to "patently offensive?" Making these determinations is an unavoidably subjective exercise. There is no clear answer. Yet laws and regulations "must provide explicit standards for those who apply them" to prevent "arbitrary and discriminatory enforcement."¹⁶ The uncertainty of when expression falls within the bounds of these vague rules will chill the speech of Edison residents.

The Council's enforcement of the prop ban illustrates how vague rules lead to arbitrary enforcement. Patel did not consistently enforce the prop ban. Bassoff first tore up the ordinance as symbolic commentary and Patel issued no warning. It was only when Bassoff held up the Constitution that a warning was issued. It is unclear why the Constitution was considered a prop but the ordinance was not.

The vague ban on props is ripe for abuse, especially against critics like Bassoff. It is all too easy to envision the Council enforcing vague decorum rules against criticism while giving the public free rein to praise the township and its leaders. That is exactly what happened in Eastpointe, Michigan,

speaker is the rationale for the restriction."); *Bible Believers v. Wayne Cnty., Mich.*, 805 F.3d 228, 248 (6th Cir. 2015) (*en banc*) (viewpoint discrimination is "censorship in its purest form," and government action "that discriminates among viewpoints threatens the continued vitality of free speech") (cleaned up).

¹⁴ *Hustler Magazine, Inc. v. Falwell*, 485 U. S. 46, 50 (1988).

¹⁵ Regulations are unconstitutionally vague if they fail to provide persons of ordinary intelligence reasonable notice of what speech is prohibited and/or afford city officials too much discretion to decide what speech to allow. *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

¹⁶ *Id.* at 108.

whose mayor shut down critical comments repeatedly at city council meetings while allowing constituents to praise her, before FIRE successfully sued the city.¹⁷

II. The Ordinance Is Viewpoint Discriminatory

The provision banning “patently offensive or abusive language” is viewpoint discriminatory on its face. As the Supreme Court has made clear, “[g]iving offense is a viewpoint.”¹⁸ While the Council may *encourage* commenters to be respectful, a rule *prohibiting* “patently offensive or abusive language” is inherently viewpoint discriminatory, as it “distinguishes between two opposed sets of ideas: those aligned with conventional moral standards and those hostile to them; those inducing societal nods of approval and those provoking offense and condemnation.”¹⁹ Critical speech directed at the government, in particular, must be viewed “against the background of a 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.”²⁰

Federal appellate courts recently invalidated similar speech restrictions. The U.S. Court of Appeals for the Sixth Circuit invalidated a school board policy that restricted “abusive,” “personally directed,” and “antagonistic” public comments during board meetings, as such restrictions “plainly fit in the ‘broad’ scope of impermissible viewpoint discrimination because . . . they prohibit speech purely because it disparages or offends.”²¹ The Eleventh Circuit similarly invalidated school board decorum rules banning “abusive,” “personally directed,” and “obscene” speech.²²

III. The Ordinance Is Unconstitutionally Overbroad

The ordinance is also unconstitutionally overbroad because it “prohibits a substantial amount of protected speech . . . not only in an absolute sense, but also relative to the statute’s plainly

¹⁷ The mayor’s disregard of constitutional standards compelled the city to enter a consent decree that, among other concessions, prohibits it from enforcing a limitation on public comments “directed at” elected officials, requires it to allow members of the public to criticize elected officials, and has resulted in an apology to its citizens whose rights the mayor violated. *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>.

¹⁸ *Matal v. Tam*, 582 U.S. 218, 243 (2017); *see also Iancu v. Brunetti*, 588 U.S. 388 (2019) (restriction on “immoral” and “scandalous” speech was viewpoint-based and unconstitutional); *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”).

¹⁹ *Iancu*, 588 U.S. at 394.

²⁰ *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964); *see also Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (“[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”).

²¹ *Ison v. Madison Local Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 864 (6th Cir. 2021).

²² *Moms for Liberty - Brevard County, FL v. Brevard Pub. Schs.*, 118 F.4th 1324 (11th Cir. 2022); *see also* Foundation for Individual Rights and Expression, *FIRE and Manhattan Institute Amicus Brief in Support of Plaintiffs-Appellants and Reversal - Moms for Liberty v. Brevard Public Schools* (April 17, 2023), viewable at <https://www.thefire.org/research-learn/fire-and-manhattan-institute-amicus-brief-support-plaintiffs-appellants-and-reversal>.

legitimate sweep,” which is unreasonable in light of the forum’s purpose of allowing public comments on issues that impact the township.²³

The bans on “abusive,” “excessively vulgar,” and “patently offensive” language unreasonably infringe on protected speech for which the public comment period is intended to provide a forum. While *some* speech the Council is regulating *could* fall into one of the few, narrowly defined exceptions to the First Amendment—such as defamation or true threats²⁴—the Council must adhere to those terms’ precise legal meanings.²⁵ These broad bans go far beyond those narrow categories or what the Council may reasonably prohibit.

As the Supreme Court recognized in its landmark *Cohen v. California* decision, “words are often chosen as much for their emotive as their cognitive force.”²⁶ In *Cohen*, the Court protected the right to wear a jacket emblazoned with “Fuck the Draft” in a county courthouse. The Court noted that if governments were allowed to “forbid particular words,” they “might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views.”²⁷ A speaker may intentionally prefer to use abrasive or impassioned language to adequately convey a message. The First Amendment protects that choice.

The provisions banning the “wearing of costumes or non-medically necessary masks while addressing the Council” and “use of props while addressing the Council” are unconstitutionally overbroad because, as Bassoff demonstrated when he displayed the Constitution and flag, speakers can use props as a non-disruptive means to convey a message and enhance their point. Bassoff was entirely calm when he delivered his remarks, and the Constitution and flag were small enough to hold in one hand. It was Patel’s *reaction* that disrupted the meeting and Bassoff’s exercise of his First Amendment rights.

At its December 9 meeting, the Council introduced a resolution that would explicitly exempt “the American flag, the United States Constitution, or any other founding documents of the United States” from the ordinance.²⁸ These exemptions would only add to the constitutional problems by favoring certain messages—those conveying patriotism or reverence for foundational U.S. symbols—over others, amounting to unconstitutional viewpoint discrimination.²⁹ While FIRE applauds the Council’s efforts to remedy the ordinance’s defects, the resolution is also inadequate for the reason that it is the ordinance itself which must be repealed or amended to remove its unconstitutional flaws. The proposal pending before the Council is a resolution, which does not

²³ *Williams*, 553 U.S. at 292 (2008).

²⁴ See *United States v. Alvarez*, 567 U.S. 709, 717 (2012).

²⁵ The Supreme Court has held that 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). True threats include intimidation, defined as speech that “directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.” *Id.* at 360. 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—“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).

²⁶ 403 U.S. 15, 26 (1971).

²⁷ *Id.* at 26.

²⁸ New Brunswick Today, *Edison Township Council Meeting - 12/9/2024*, YOUTUBE, <https://youtu.be/Mtu8UYtvMfw?feature=shared&t=241>.

²⁹ *Rosenberger*, 515 U.S. at 829.

carry the same force as the *ordinance* at issue. A promise to enforce the ordinance wisely will not save the ordinance’s facial defects.³⁰ Instead, the Council should amend the ordinance to clarify that it applies *only* to “actual disruption,” and that speech—whether verbal or through the use of props—will not be curtailed unless it meets that standard.³¹

IV. Conclusion

The decorum ordinance is unreasonable, unconstitutionally vague, viewpoint discriminatory, and overbroad. Its enforcement against Bassoff needlessly infringed on his First Amendment rights. He did not make any threats, speak on topics unrelated to town affairs, talk out of turn, exceed his time limit, or use the Constitution and flag in a disruptive manner. The Council cannot shut down criticism or other protected speech under the guise of orderly meeting administration. For all these reasons, FIRE calls on the Council to repeal or amend the decorum ordinance and to refrain from infringing on speakers’ First Amendment rights going forward.

We respectfully request a substantive response to this letter no later than December 20, 2024.

Sincerely,



Stephanie Jablonsky, Esq.
Senior Program Officer, Public Advocacy

Cc: Sam Joshi, Mayor
Louis Rainone, Esq., Town Attorney

³⁰ “But the First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*. We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.” *U.S. v. Stevens*, 559 U.S. 460, 480 (2010).

³¹ *See Norse v. City of Santa Cruz*, 629 F.3d 966, 975–76 (9th Cir. 2010) (“Actual disruption means actual disruption.”).