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14 July 2023

The Honorable John Reese and Jon Williams
Mayor and City Manager of Winter Garden
300 W Plant Street
Winter Garden, Florida 32789

Re: Sunshine Laws and Reporter's rights

Dear Mayor Reese and City Manager Williams,

The First Amendment Foundation was founded nearly four decades ago to protect and advance the principles and laws that guarantee open government and public records access in Florida. We also protect and advance the freedoms and rights established under the First Amendment of U.S. Constitution, including the workings of a free press.

This is the reason we are writing to you. We have learned that on February 9, 2023, Winter Garden unanimously passed Resolution 23-02, which includes "Rules of Conduct for the Media." As we understand the resolution and how it functions:

- Media may not "disrupt" a meeting.
- The mayor/commissioner, commissioners, other city officials should not be followed, heckled, harassed before, during or after city meetings to request interviews, to obtain comments or respond to questions.
- Media are not to use public comments for media questions. They can speak to a public information officer to get questions answered.
- Other than the city manager, there is no designated public information officer.
- Repeated disruptive behavior or harassment may result in the journalist being prohibited from attending meetings as a "cooling down" period. Another reporter can go in their stead.

The provisions of this resolution are concerning in themselves and were noted by the Foundation when they first passed. Now it is the more-recent threat of implementation that prompts us to write you.

We have now learned that over the past month, Winter Garden is using the resolution's provision against a particular journalist in a way that almost certainly would violate the journalist's rights as a journalist to cover city government in Winter Garden.

According to what we have learned, on June 8, Norine Dworkin, an editor and reporter with Vox Populi, a local online news outlet that covers Winter Garden, used the public comments portion of the city commission meeting to ask questions of Mayor Rees and District 1 City Commissioner Lisa Bennett. Ms. Dworkin had exhausted other methods of asking questions, and mentioned that she was asking because she had received no response to her questions that she originally sent in an email to the mayor. Mayor Reese then publicly stated that he does not read emails from Vox Populi. On June 14, City Manager Williams then directed the chief of police to investigate Ms. Dworkin for violating the public comments section of the Resolution 23-02 by asking the mayor and the commissioner questions during the meeting's public comment period.

On June 15, Ms. Dworkin again sent email questions about anti-Semitic flyers left in the city by a neo-Nazi group. These questions too went unanswered. On June 22, Ms. Dworkin again used the public comment period to pose her questions to the mayor. The following day, she received an official notice of violation from the city manager stating that she had violated the public comments section of Resolution 23-02. In the message she was told "continued violation of any portion of Resolution 23-02 will result in the City seeking enforcement as further defined within the attached" copy of the resolution.

FAF understands that the city has further threatened to ban Ms. Dworkin from city meetings. After careful review, it is the First Amendment Foundation's position that portions of Resolution 23-02 are facially unconstitutional, and the city's as-applied enforcement of the resolution are a clear violation of Ms. Dworkin's rights as a reporter to engage in newsgathering, an activity that is without cavil protected by the First Amendment. Therefore, we respectfully request that the Winter Garden City Commission comply with the requirements of U.S. Constitution and refrain from any further action in regard to enforcement of this resolution.

BACKGROUND

The Supreme Court has repeatedly held that discussions on public officials and government business should be open and robust, and are fully protected by the First Amendment, even if not always in perfect taste. (See *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 47 (1988); *Jones v. State Bd. of Ed. for Tenn.*, 397 U.S.31,33(1970); *NY Times v. Sullivan*, 376 U.S. 254, 269 (1964) (citing *Bridges v. California*, 314 U.S. 252

(1941)). It has long been recognized that discussion of public issues lies "at the heart of the First Amendment." (See *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 776 (1978)).

Speech during public meetings warrants the highest level of protection because such speech falls under the First Amendment's guarantees of freedom of speech, freedom of the press, and the right to petition our government. Thus, in creating legal parameters that govern public comment, local governing boards must be cautious not to trample on the First Amendment rights of those wishing to speak or ask questions of officials.

The law also recognizes that in contrast to promoting efficiency and decorum in public meetings, the public's right to know about the performance of government entities is a wholly protected by the First Amendment.

Therefore, any restriction on political speech on inhibits the public's First Amendment right to know information essential to self-governance. See *Lozman v. City of Riviera Beach*, 138 S. Ct. 1945 (2018).

While some case law recognizes that comment sessions should be categorized as a "limited" designated public forum in order to protect the dual goals of conducting government business in an orderly and efficient manner while providing the opportunity for citizens to voice their opinions on matters of public concern, and that speech may be limited to the subject or topic on hand, it also recognizes that further restrictions holding citizen participation to a heightened standard of scrutiny undermines the highest level of protection afforded to free speech. See *Leventhal v. Vista United Sch. Dist.*, 973 F. Supp. 951 (S.D. Calif. 1997).

All of these principles are embodied in section 286.0114, Florida Statutes, which directly addresses what limitations are permissible in this context.

Subparagraph 286.0114(2) states:

Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

Subparagraph 286.0114(4) provides the specific areas of permissible

restriction:

Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

- a) Provide guidelines regarding the amount of time an individual has to address the board or commission;
- b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
- c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
- d) Designate a specified period of time for public comment.

Notably, the preceding list is exclusive. If a limitation is not on that list, then it is unlawful. None of the permissible limitations allows for restrictions on directly addressing individual members of the commission or questions by members of the media during public comment period.

While the City might contend that Resolution 23-02 does not restrict any journalist's right to work or question public officials by designating a procedure to do so, this falls apart when there is no designated public information officer or when government officials refuse to communicate with journalists, who Florida law soundly recognizes as surrogates for members of the public. In this light denying them access to officials during public comment periods or forbidding them from asking them questions when the officials enter or leave meetings can only be seen as a violation of the journalist's First Amendment rights. Furthermore, the City may claim no First Amendment violation by stating that the ban would pertain to an individual journalist rather than an entire publication. This, too, is false. Many news outlets today consist of only a single reporter and editor. The net effect of banning an individual reporter in this case is to ban the entire publication, thus denying their audience the right to know.

The Resolution's prohibition on asking questions is an arbitrary restriction of these rights. Prohibiting journalists and citizens from asking questions during a City Commission meeting, and then threatening to bar such people from meetings upon violation of the arbitrary restriction surely is a violation of First Amendment rights.

To squelch a citizen from engaging in free speech or petition, both of which include questions, is not only unlawful, it also demonstrates a low tolerance for disagreeable speech. Citizen speech of all types exists at the core of the First Amendment and is essential to our system of self-government. *Nieves v. Bartlett*, 138

S. Ct. 2709 (2018); *Mills v. Alabama*, 384 U.S. 214 (1966).

In conclusion, we strongly urge the City of Winter Garden to rework its resolution to conform to federal and state law and further to cease its threats against Ms. Dworkin that would unlawfully infringe on her newsgathering rights. We understand the City Commission has a right to maintain order and decorum and enhance the efficiency of public meetings. Therefore, the First Amendment Foundation is available to assist the City on crafting an acceptable public participation policy as a precursor to any potential litigation. The resources of the First Amendment Foundation are available to everyone.

Sincerely,

Bobby Block, Executive Director, The First Amendment Foundation

cc: City Attorney Ardaman; Norine Dworkin