July 23, 2018

Mayor Steinberg & Sacramento City Council

Re: **Update to the Council Rules of Procedure File ID: 2018-01095**

Dear Mr. Mayor and Members of the Counsel:

I am writing as a resident of Southside Park to ask that you oppose Staff's proposed update to Chapter 5 of the Council Rules of Procedure, which is Item 2 on the July 24, 2018 agenda. The proposed update would bar members of the public from speaking at council meetings potentially for many months for violating ill-defined rules of "decorum," among other purported violations. There appears to be no appeals process. This action would create unconstitutional and illegal restrictions on public speech where it should be at its height – the right to petition the government, and to protest against it.

The proposed policy is sweeping. It would allow the presiding officer or the decorum officer to direct any person be removed from the council meeting for perceived violations, and allow continuing removal for repeated "infractions." Such infractions are very much in the eye of the beholder – notably including such offenses as "interjection[s]" (such as protest chants) when "not at the podium, "organized silent demonstrations", failing to heed a "call for order", or, notably, failure to observe *any other* rule noted in Chapters 3 and 4 of the Rules of Procedure that binds council *members*. (Thereby improperly imposing standards for *servants of the public* on the public itself). These other rules include, for instance, amorphous requirements like "[p]roject[ing] a positive image of the city when dealing with other agencies," "mak[ing the public feel welcome," "encourage[ing] dissent.. while being mindful not to prolong discourse or block consensus," and "continually work[ing] to build trust in each other." In other words: Under these rules, a member of the public may be barred from council meetings simply for—say – silently protesting or, worse, appearing to "block consensus" on a proposal with which they may disagree.

This overbroad and inapposite collection of vague requirements (of which I have cited only a few) provide an improper license for viewpoint discrimination, and for arbitrary and capricious enforcement, on behalf of whoever happens to be presiding over the meeting. The proposed amendments mean that members of the public can be denied the right to share their views with their government if the *government* finds those views, or how they are expressed, somehow offensive.

As you know, both the federal and state Constitutions strenuously protect this right. So, of course, does California's Brown Act, which provides further statutory guarantees for these rights. In brief, under the federal and state constitutions, only the most pressing of government interests can warrant even narrowly-tailored restrictions on public speech, and, especially, speech *to* the government. Because the emotive content of speech is a critical component of its meaning, protest (perhaps, especially, undecorous) protest is very much protected. As the

U.S. Supreme Court reminds us, "[i]f 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 and disagreeable." (*Texas v. Johnson*, 491 U.S. 397, 414 (1989)).

This rule applies with particular force to meetings of public bodies. For instance, the Ninth Circuit Court of Appeals recently struck down as unconstitutionally overbroad a city council ordinance that barred "insolent" behavior (among other violations). (*See Acosta v. City of Costa Mesa*, 718 F.3d 800, 816-17).As the court explained, ejection for "*actually* disturbing or impending a meeting" may be permissibly (*see id.* at 811), but a city "cannot merely define disturbance in any way it chooses, e.g., it may not deem any violation of its rules of decorum to be a disturbance." (*Id.*at 811 (internal citations omitted)). As the Circuit has previously explained, cities may not "rewrite First Amendment law to extinguish the rights that citizens have when they attend public meetings." (*See Norse v. City of Santa Cruz*, 629 F.3d 966, 976 (2010) (en banc)).[1] To say the obvious: The sorts of activities that could bar council attendance, such as joining a *silent* protest or transgressing the utterly ill-defined requirements of Chapters 3 and 4 – such as "prolong[ing] discourse" – could not possibly rise to the level of an "actual" disruption.

Moreover, these cases generally concern the removal of citizens from individual meetings, not from future meetings. The City's proposal is worse: it creates a prior restraint, without appeal, by barring all speech at future meetings. The government interest that might, in extreme cases, allow for removal of a citizen from one meeting cannot suffice for a months-long bar on speech, on any topic, at any meeting until a rigid and untailored penalty period has run.

Nor does the proposal to allow barred citizens to comment via other means save the City's proposal. As the courts have explained, with regard to a similar city ordinance that allowed other means of communication, this just does not suffice. "One is not to have the exercise of one's liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." (*Schneider v. New Jersey*, 308 U.S. 147, 163 (1939)). A government meeting "is a legally proper place for citizens to voice their complaints" so a restrictive policy "is an invlaid restriction on speech at such meetings and the fact that [the public] may speak in [say] closed sessions, in public, or even on the … steps, does not validate the otherwise invalid policy." (*Baca v. Moreno Valley Unified School Dist.*, 936 F.Supp. 719 (1996)).

Such restrictions also offend the Brown Act, which provides that "*all* persons shall be permitted to attend *any* meeting of the legislative body of a local agency" save for certain specific, statutorily-enumerated exceptions (not relevant here) for closed sessions on legal advice and

[1] *Norse*, I should note, involved a citizen who made a Nazi salute to indicate he viewed his city council as fascist; the Court was clear that such a gesture, offensive though it is, is protected. I note, with dismay, that the Mayor of Sacramento has previously insisted citizens stop speaking for referring to the police as the "gestapo." Such restrictions are, similarly, unconstitutional. Fundamentally, public officials may not prohibit speech on public issues, even if they find it personally unpleasant.

the like. (Cal. Gov. Code § 5393(a) (emphasis added)). Notably, no "condition precedent to his or her attendance" may be imposed on any citizen (Cal. Gov. Code § 54953.3) – such as, in this case, apparently having been suitably "decorous" at a prior meeting. Nor may a local agency "prohibit public criticism" – which, of course, is exactly what this proposal means to do under the guise of avoiding "disruption." (*See* Cal. Gov. Code § 54954.3(c)). This is a matter of "overriding public importance." (Cal. Gov. Code § 54954.4(c)). The City may not supplant it with a system of prior restraints on meeting attendance placed within the unreviewable discretion of the Council. Instead, the Council can reasonably regulate its business, and avoid true disruptions, with ordinary civil and criminal laws now on the books.

Let me speak plainly: Beyond these many legal difficulties, the procedural amendments are just a bad idea. They tell the public that the Council is more concerned with doing business as it sees it, rather than listening to expressions of profound distress. Sacramentans have every reason to be distressed: There have been a series of police killings, the city faces a serious housing crisis, federal ICE agents prowl the streets. Of *course* people react to these times with anguish, emotion, and vehemence. That this reaction may not always be "decorous" in the view of the Council does not make it wrong, or not worth hearing. As Martin Luther King, Jr., reminds us, "we've got to see that a riot is the language of the unheard."

The City should listen to the unheard, and give them reason to applaud rather than riot. Reject this proposal.

Sincerely,

Craig Segall
csegall@gmail.com