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CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
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April 3, 2023

Mayor Sumbul Siddiqui
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Legal Opinion on Recent Supreme Judicial Court Case Regarding Public Comment

Dear Madam Mayor:

At your request, we have prepared this legal opinion to provide guidance to the City Council concerning the recent Supreme Judicial Court case, Barron v. Kolenda, -- Mass. --, 203 N.E.3d 1125, SJC-13284 (2023), regarding limits on public comment sessions at public meetings. The Court ruled in the Barron case that municipalities can require that public comment sessions be conducted in an “orderly and peaceable manner,” but that all restrictions on public comment sessions must be restrictions relating to time, place, and manner that do not violate the right to assembly under Article 19 of the Massachusetts Declaration of Rights or the right to free speech under Article 16 of the Declaration of Rights. In the Barron case, the Court held that a public comment policy that sought to impose civility standards violated Articles 19 and 16 of the Declaration of Rights.

The Barron case arose out of the Town of Southborough Select Board’s public comment policy and its requirement that public comments be “respectful and courteous, [and] free of rude, personal or slanderous remarks.” During the public comment period of a Select Board meeting, the plaintiff made comments critical of the chair of the board and then called the chair “a Hitler.” In response, the chair recessed the meeting and threatened to have the plaintiff escorted out if she did not leave. The plaintiff then left. The plaintiff brought suit asserting, amongst other claims, that the public comment policy was unconstitutional under the Massachusetts Declaration of Rights.

The Court in the Barron case explicitly approved restrictions that “designate when and where public session may occur, how long public comment sessions last, the time limits for each person speaking during the public comment session, and rules preventing speakers from disrupting others and removing those who do.” The Court also explicitly held that “[u]nder both

arts. 19 and 16, such civility restrains on the content of speech at a public comment session in a public meeting are forbidden. Although civility, of course, is to be encouraged, it cannot be required regarding the content of what may be said in a public comment session of a governmental meeting without violating both provisions of the Massachusetts Declaration of Rights, which provide for a robust protection of public criticism of governmental action and officials.” The Court did not address whether slander can be prohibited, noting that such a prohibition “raises different questions” that it “need not resolve”, and that “at least under First Amendment principles, slander directed at public officials requires actual malice”. Id. at FN. 8.

Although the Court held that the Southborough policy impermissibly regulated the content of speech, the Court held in dicta that a policy that regulates public comment to subjects on an agenda is likely permissible. In the Barron case, the public comment policy did not limit comments to topics on the current agenda, so the Court in the Barron case stated “[t]his is not a case in which the public meeting was limited to a particular item or items. Although that would be content based, in order to function efficiently, towns must be able to hold public meetings limited to a particular subject without violating art. 19, so long as the town provides other opportunities to exercise this right” Id. at FN. 10.

Therefore, we do not advise amending the language found in Rule 24C of the Rules of the City Council that limits public comment to certain categories of agenda items. Rule 24C of the Rules of the City Council states: “[m]embers of the public may comment upon items in the following categories of business: Motions for reconsideration, City Manager’s consent agenda, Unfinished business from preceding meetings, Applications and Petitions requiring approval or referral by the city Council, Consent resolutions, Consent Policy orders and resolutions relating to policy analysis or development, Committee Reports, Roundtable/Working Meeting Minutes, Communications and Reports from Other City Officers.” These categories of agenda items are the subjects that the Council may deliberate on at a meeting and it is permissible to limit public comment to these subjects. However, the Council should keep in mind that whether it is permissible to limit public comment to topics on the agenda was not a question in the Barron case, and therefore the Court’s comments in that regard are not persuasive authority in future cases. This issue could arise in a future case and a court may reach a different outcome.

In summary, the Court did make certain things clear:

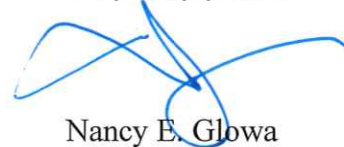
- (1) public speakers cannot be barred from “rude”, “disrespectful”, or “personal” speech directed at public officials;
- (2) the Council cannot treat speakers differently from each other based on their views or on how those views are expressed;
- (3) the Council can continue to impose reasonable time limits for each speaker; and
- (4) speakers can be barred from interrupting or interfering with other speakers; engaging in physical conduct; and engaging in speech that threatens violence or incites imminent unlawful conduct by others.

In connection with our review of the Court’s decision in Barron, we have reviewed the Rules of the City Council and recommend the following amendments to Rule 38.6 to conform with the Court’s decision and our interpretation of its import. The first sentence of Rule 38.6

currently reads "All persons shall confine their remarks to the question under debate and avoid personalities. The following will not be tolerated: uttering fighting words, slander, speeches invasive of the privacy of individuals, unreasonably loud or repetitive speech, and/or speech so disruptive of City Council proceedings that the legislative process is substantially interrupted." Because the Court ruled specifically that "rude", "disrespectful", and "personal" speech directed at public officials must be allowed, we recommend amending this sentence to read "All persons shall confine their remarks to the question under debate. The following will not be tolerated: uttering fighting words, slander, unreasonably loud or repetitive speech, and/or speech so disruptive of City Council proceedings that the legislative process is substantially interrupted."

I will be available to discuss these proposed changes with the Council at a future meeting.

Very truly yours,



Nancy E. Glowa
City Solicitor