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CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

August 7, 2023

Yi-An Huang
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Council Order No. O-3 of 10/31/22 Re: Requesting a Legal Opinion from the City Solicitor on the requirement for a speaker to state their name, address, and phone number for the Record at City Council Meetings.

Dear Mr. Huang:

The following is in response to the above-referenced Council Order and addresses whether the City can require a person to provide their name, address, and phone number to register for public comment or when they are speaking at a City Council or City Council committee meeting.

Currently, City Council Rule 24C(1)(b) states: "The individual [speaker] should indicate on the signup sheet their name, address, and which item(s) they are planning to address. Individuals will be heard in the order that they signed up whether they are participating in person or remotely." The City Council has generally not, however, excluded speakers that failed to complete the signup sheet or refused to identify themselves while speaking at public comment.

After review, and for the reasons presented as follows, it is my opinion that the City Council's requirement that speakers state their name, address, and phone number during the public comment portion of City Council meetings would likely withstand legal scrutiny if challenged.

I. First Amendment

In determining whether a private speaker has been unconstitutionally excluded from use of a forum, the standard to be applied depends on the nature of the forum. Good News Club v. Milford Cent. Sch., 533 U.S. 98, 106 (2001). The Supreme Court has distinguished between several types of forums, including traditional public forums, designated public forums, and non-public forums. Ridley v. Mass. Bay Transp. Auth., 390 F.3d 65, 76 (1st Cir. 2004), quoting Curnin v. Town of Egremont, 510 F.3d 24, 28 (1st Cir. 2017) (noting that "This circuit has used the phrase "limited public forums" to describe non-public forums ... and we adhere to that usage here." (internal citations omitted)). Courts have regarded City Council meetings as "limited public forums" under First Amendment forum analysis. See White v. City of Norwalk, 900 F.2d 1421, 1425 (9th Cir.

1990) (“holding that city council meetings “where the public is afforded the opportunity to address the [c]ouncil,....have been regarded as public forums, albeit limited ones” and that city council did not violate First Amendment “when it restricts public speakers to the subject at hand” because “public forum may be created by government designating place or channel of communication...for the discussion of certain subjects”). The First Circuit Court of Appeals has equated the “limited public forum” standard with the standard of a “non-public forum.” Ridley, 390 F.3d at 75. In non-public forums, access can be restricted if the requirements are reasonable and not instituted to suppress expression merely because public officials oppose the speaker’s views. Cornelius v. NAACP Legal Defense & Educ. Fund, Inc., 473 U.S. 788, 800 (1985). Such requirements must also not discriminate against speech based on viewpoint and must be reasonable considering the purpose served by the forum. Cornelius, 105 U.S. Ct at 3451.

The City has a reasonable interest in identifying speakers to fulfill public policy interests and for Councilors and City staff to know how best to reach out to and assist them. Additionally, the City’s interest in requiring speakers to register is reasonable as it: ensures that speakers are from the community and have interest in the matters; allows speakers to be listed in order to ensure the City does not lose track of speakers, allows for the keeping of accurate records and constituent outreach and services, and maintains decorum and order in the public comment portion of City Council proceedings. These reasons on their face appear to meet and even to exceed the low threshold of reasonableness in a limited public forum under the First Circuit caselaw. Cornelius, 105 U.S. Ct at 3452 (noting that the “decision to restrict access to a nonpublic forum need only be reasonable; it need not be the most reasonable for the only reasonable limitation” (quoting from Carlow v. Mruk, 415 F. Supp. 2d 225, 242 (2006))). Moreover, the requirement is viewpoint neutral as it does not exclude nor is it affected by the viewpoint of the speaker. Instead, the requirement merely asks all speakers, regardless of viewpoint, to provide their name and address before speaking or registering to speak. Similarly, the prerequisite is content neutral as it does not relate to the content of any speaker’s remarks or to the content or subject matter of any City Council meeting or public comment session. Instead, the requirement is applicable to all sessions held by the Council at which the public is allowed to speak, regardless of subject matter or content. Additionally, the very fact that the requirement applies to everyone and is a prerequisite to speaking means that the City does not know the content of the prospective speech or viewpoint of the speaker before applying the requirement, meaning that the requirement is unlikely to be anything other than content or viewpoint neutral. Therefore, the proposed requirement is not likely to infringe on the First Amendment rights of speakers if considered under the limited public forum analysis applied by the First Circuit.

The proposed requirement also satisfies the public forum doctrine, to the extent a court were ever to consider the public speaker portion of a Council meeting to be a typical public forum. In a typical public forum, the City Council may restrict access by content neutral conditions for the time, place, and manner of access. Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. at 45-46, 103 U.S. Ct. 948 (1983) Courts have upheld a residency requirement for speaking at city council meetings against First Amendment and Equal Protection challenges. Rowe v. City of Cocoa, Florida, 358 F.3d 800, 803 (11th Cir. 2004). In the Rowe case, the court upheld a more robust requirement that required personal information of the speaker and a residency requirement. Id. at 804. Additionally, courts have found there to be a significant governmental interest in conducting orderly, efficient meetings of public bodies. Jones v. Heyman, 888 F.2d 1332 (11th Cir. 1989). The City’s speaker requirement ensures that the Council can identify and address the issues

that are raised by the speakers so that meetings remain orderly and productive. The City's requirement, like those in the above referenced cases, is viewpoint and content neutral. Lastly, it is also narrowly tailored, as there may not be any other ways to achieve the goals of identifying constituents and ensuring decorum and proper behavior.¹ Therefore, the proposed requirement would likely be upheld by a court under the public forum analysis.

II. Fourteenth Amendment

"The Equal Protection Clause does not forbid classifications. It simply keeps governmental decision makers from treating differently persons who are in all relevant aspects alike." Nordlinger v. Hahn, 505 U.S. 1, 10 (1992). As detailed above, the City's requirement would have no bearing on the speaker's viewpoint. Instead, the requirement merely focuses on identification of the speaker's name, address, and phone number as pre-requisites to public speaking. Therefore, the proposed requirement would not violate the Fourteenth Amendment rights of the speaker.

III. Open Meeting Law ("OML")

The OML permits the public to attend an open meeting. However, there is no requirement to allow a member of the public to address a public body or provide testimony without permission of the chair. While the Attorney General's Division of Open Government ("AG") encourages public bodies to allow as much public participation as time allows, its decisions confirm that the OML neither requires nor enforces the public's attendance. See OML 2015-12 ("While we find that it is within the Chair's discretion to limit participation during the comment period, and thus [the chair] did not violate the Open Meeting Law by doing so here, we encourage public bodies to allow public participation during meetings whenever possible; see also OML 2014-129; OML 2012-59; OML 2012-23. (noting that the AG takes no position as to whether any other law requires that citizens be given opportunity to speak at public meetings). The OML therefore would not hinder the City from implementing this requirement.

IV. Conclusion

For the reasons stated above, it is my opinion that the City Council's requirement that speakers state their name, address, and phone number for the record at City Council meetings would likely withstand legal scrutiny².

Very truly yours,



Nancy E. Glowa
City Solicitor

¹ Notwithstanding the requirements already in place to curb inappropriate conduct by the OML: "*While the public is permitted to attend an open meeting, an individual may not address the public body without permission of the chair. An individual may not disrupt a meeting of a public body, and at the request of the chair, all members of the public shall be silent. If, after clear warning, a person continues to be disruptive, the chair may order the person to leave the meeting.*" Commonwealth of Massachusetts Open Meeting Law Guide and Educational Materials (January 2018).

² Some speakers have stated concern for their safety or privacy if they give their name and address for the record. Thus, the Council could allow those concerned with identifying their name and address to state that they have such concerns and therefore prefer not to provide their name and/or address, with leave of the Chair.