

**AGENDA REQUEST FORM**

**FOR: Council Meeting of May 3, 2022**

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**FROM: Kit Williams**

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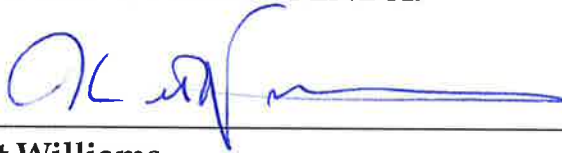
**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

A RESOLUTION TO AMEND A.7.e. **COURTESY AND RESPECT** AND A.d.(2) **PUBLIC COMMENTS** OF THE RULES AND ORDER AND PROCEDURE OF THE FAYETTEVILLE CITY COUNCIL TO BETTER CONFORM WITH RECENT FIRST AMENDMENT COURT DECISIONS

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**APPROVED FOR AGENDA:**



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**Kit Williams**  
City Attorney

April 14, 2022  
Date



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



Kit Williams  
City Attorney

Blake Pennington  
Assistant City Attorney

Jodi Batker  
Paralegal

TO: Mayor Jordan  
City Council

CC: Susan Norton, Chief of Staff

FROM: Kit Williams, City Attorney

DATE: April 14, 2022

RE: Slight changes in Public Comments and Courtesy and Respect sections of the *Rules of Order and Procedure of the Fayetteville City Council* are needed because of recent Court decisions

I sent you a memo on January 19, 2022, that stated that some minor changes to your *Rules* governing public comments were probably needed. This was confirmed during the IMLA Mid-year Seminar we attended in D.C. I also believe the last sentence of Public Comments could be mistakenly interpreted to mean that the IT Department could limit the content of an electronic visual aid that a member of the public wishes to present at a City Council meeting. By grant of statutory authority and as recognized by the *Rules of Order and Procedure of the Fayetteville City Council*, only the Mayor can enforce order at the City Council meeting, limit the public's comments to an agenda item being considered and stop any harassing or personal attacks which include abusive comments and derogatory remarks about a person's integrity.

As Fayetteville City Attorney, I sponsor very few agenda items which almost always concern legal or constitutional concerns that need to be addressed and resolved by the Fayetteville City Council. I believe my proposed amendment to your *Rules of Order and Procedure* is one of those rare times that it is appropriate for me to sponsor such agenda item.

Your current *Rules* attempt to prevent "rude... remarks." Personally, I like this limitation and hope that we will not be subjected to rude remarks from staff, elected officials or citizens in the future. However, I do fear that "rude" is such a broad term that a Court might interpret our attempt to limit "rude" remarks as

an unconstitutionally vague limit on the public's free speech rights. Thus, I believe we need to remove this reference and replace it with language approved by a recent Federal Circuit Court decision regarding local government public comment rules.

As I told you in my January 19, 2022 memo (attached), the Fourth Circuit Court of Appeals found that a governing body's limitations of public comment during the body's limited public forum were constitutional. The Court upheld limitations that restricted "discussion to specified agenda items" as we also do. They further upheld disallowing comments "that are harassing or amount to a personal attack against any identifiable individual..." These limitations were found justifiable because "they are reasonable 'to further the forum's purpose of good business'". *Davidson v. Loudoun County School Board*, slip opinion No. 20-1683 (4<sup>th</sup> Circuit December 3, 2021). I believe we should closely mirror this language as I have tried to in my proposed Resolution.

If anyone has any questions or comments, please let me know as quickly as possible.



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



Kit Williams  
City Attorney

Blake Pennington  
Assistant City Attorney

Jodi Batker  
Paralegal

TO: **Mayor Jordan**  
**City Council**  
**City Clerk**

CC: **Susan Norton**, Chief of Staff  
**Keith Macedo**, Information Technologies Director

FROM: **Kit Williams**, City Attorney

DATE: **January 19, 2022**

**RE: Fourth Circuit Affirmed imposing reasonable restrictions on public comment**

The United States Court of Appeals for the Fourth Circuit just affirmed as constitutional a local governing body's policy of a limited public forum which is viewpoint neutral and is "justified in limiting its meeting to discussion of specified agenda items and in imposing reasonable restrictions... to further the forum's purpose of conducting public business." *Davidson v. Loudoun County School Board*, slip opinion No. 20-1683 (4<sup>th</sup> Cir. Dec. 3, 2021); quoting *Steinburg v. Chesterfield County Planning Commission*, 527 F. 3d 377, 385 (4<sup>th</sup> Cir. 2008).

The Fourth Circuit affirmed the limitation in the School Board's policy that does not allow comments "that are harassing or amount to a personal attack against any identifiable individual..." *Id.* "The policy prohibits all personal attacks, regardless of viewpoint, because they cause 'unnecessary delay or disruption to a meeting.'" *Id.* The Court found that the School Board "is justified in imposing these restrictions as they are reasonable 'to further the forum's purpose of good business.'" *Id.*

The Fourth Circuit Court of Appeals then affirmed the District Court's grant of Summary Judgment to the School Board which dismissed a disorderly member of the public's First Amendment and Due Process claims when he was not allowed further comment.

The School Board's policy limiting public comments to the subject of the agenda item and prohibiting personal attacks on anyone is similar to your limited public forum rules in *Rules of Order and Procedure of the Fayetteville City Council*. These rules are also viewpoint neutral, designed to allow substantial public comment on agenda items, but restrict comments to the agenda item before the Council and prohibits personal attacks which not only are not relevant to the agenda item, but also cause unnecessary delay and disruption of the City Council meeting.