FIRE
Foundation for Individual Rights and Expression

April 29, 2025

Los Angeles City Council
City Hall, Room 340
200 North Spring Street
Los Angeles, California 90012

Sent via Electronic Mail (LACouncilComment.com; mandy.morales@lacity.org)

Dear Council Members:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, is concerned about a proposed Los Angeles City Council measure that would impose a flat ban on certain "offensive epithets" during council meetings—regardless of context. While FIRE appreciates the Council is attempting to address real issues concerning decorum,[1] the proposal would implement an unconstitutional solution when better alternatives that do not infringe on the speech rights of your constituents are available. While the First Amendment permits the Council to prohibit actual disruptions or speech that falls outside constitutional protection, it does not allow governing bodies to preemptively ban words because they cause offense or might lead to disruption in certain contexts. FIRE accordingly calls on the Council to reject this unconstitutional proposal.

Our concerns arise from Motion 16-1104-S3[2]—as approved by the Rules, Elections, and Intergovernmental Relations Committee on April 11—which would ban the words "cunt" and "nigger" or their variations in public meetings in any context.[3] A later motion led it to include: "Public speakers are prohibited from using the N-word and C-word and their variations even though the speakers would use the words to express a non-offensive, non-

[1] *See* Will Conybeare, *Los Angeles City Council looking to crack down on 2 specific slurs during meetings*, KTLA 5 (March 23, 2025), https://ktla.com/news/local-news/los-angeles-city-council-looking-to-crack-down-on-2-specific-slurs-during-meetings/; Rebecca Ellis and David Zahniser, *L.A. County got a restraining order against a foul-mouthed gadfly. He denies making threats.*, L.A. TIMES (Oct. 20, 2023), https://www.latimes.com/california/story/2023-10-20/county-gets-restraining-order-against-frequent-meeting-disruptor.

[2] Motion 16-1104-S3 is viewable at https://clkrep.lacity.org/onlinedocs/2016/16-1104-S3_misc_03-21-25.pdf.

[3] The April 11, 2025, agenda for the committee meeting is viewable at https://lacity.primegov.com/Portal/Meeting?meetingTemplateId=140038.

vulgar viewpoint.... [The Council may recess to Closed Session to confer with its legal counsel relative to the above matter based on a significant exposure to litigation, pursuant to Government Code Section 54956.9(d)(2) and (e)(3). (One potential case.)]"[4] According to the motion, there have been multiple occasions in which speakers directed these epithets at council members and city staff, which provoked disruptive public outcry and nearly escalated into physical altercations but for the intervention of security personnel.[5]

A municipal meeting that allows public comment is, at minimum, a limited public forum, such that the Council may restrict the content of constituents' speech only if restrictions are viewpoint-neutral and reasonable in light of the forum's purpose.[6] The Council may, for example, limit the amount of time reserved for each public comment or limit comments to agenda-specific items only. But the Council may not entirely ban certain words regardless of context in public comments because they can cause offense or can lead to disruption.

It is a "bedrock principle underlying the First Amendment" that officials cannot restrict speech simply because some find it "offensive or disagreeable."[7] In *R.A.V. v. City of St. Paul*, for example, the Supreme Court invalidated an ordinance that prohibited placing on any property symbols that "arouse[] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender."[8] In later holding the First Amendment protected protesters holding signs with insulting messages like "God hates fags" outside soldiers' funerals, the Court reiterated the broad constitutional protection for expression, recognizing that "[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate."[9]

The proposed policy plainly violates these principles by categorically singling out for prohibition two "offensive and injurious epithets." The Council can proscribe *conduct* that disrupts a meeting or speech that falls into a narrow, unprotected category like true threats, intimidation, or incitement—but only if the speech meets those terms' precise legal definitions.[10] Whether speech falls into an unprotected category depends on context, intent, and effect—which requires a case-by-case analysis. A blanket ban on specific words, which unavoidably encompasses protected expression, is unconstitutional.

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[4] The April 29, 2025, agenda for the committee meeting is viewable at https://lacity.primegov.com/Public/CompiledDocument?meetingTemplateId=140850&compileOutputType=1.

[5] *Supra* note 1.

[6] *See Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995).

[7] *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

[8] 505 U.S. 377, 379 (1992).

[9] *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

[10] A "true threat" is a statement by which "the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003). True threats include intimidation, defined as speech that "directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." *Id.* at 360. "Incitement" does not cover speech that merely aggravates, annoys, or even enrages the listener, but rather applies to advocacy of force "where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

The motion cites as its legal basis the Supreme Court's decision in *Chaplinsky v. New Hampshire*, which established the "fighting words" doctrine.[11] *Chaplinsky* defined "fighting words" as "those which by their very utterance inflict injury or tend to incite an immediate breach of the peace."[12] It is important to note that while "fighting words" are unprotected, this 1942 doctrine and definition have since then been substantially narrowed in scope,[13] so much so that some legal scholars deem it essentially dead in practice.[14] In *Gooding v. Wilson*, the Court narrowed the definition of "fighting words" to those which "tend to incite an immediate breach of the peace."[15] The Supreme Court has not upheld a single punishment for fighting words since *Chaplinsky*.[16]

In any event, the question of whether speech falls into an unprotected category of speech—including "fighting words"—depends on the specific factual circumstances in which it is uttered. Intent and context are essential. Language is, after all, highly contextual, and the same words can have very different meanings and effects in different circumstances and when voiced by different speakers. Words and their social connotations can also evolve over time. In fact, the word "cunt" has become more acceptable in pop culture, devoid of any negative connotation in certain contexts.[17] No words or phrases—even those widely considered to be deeply offensive—are "fighting words" in the abstract or in all situations.[18]

The Supreme Court made this clear in *Cohen v. California*, upholding a man's right to wear a jacket that read "Fuck the Draft" in a courthouse at a time when tensions over the Vietnam

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[11] 315 U.S. 568, 572 (1942). The case arose after a riot broke out after Walter Chaplinsky handed out pamphlets critical of organized religion. Chaplinsky was subsequently arrested and punished for calling a local marshal "a God-damned racketeer" and "a damned Fascist." He was convicted under a state law which banned saying "offensive, derisive or annoying" words toward others or preventing them from going about their lawful business.

[12] *Id.*

[13] *See id.* at 26 ; *Gooding v. Wilson*, 405 U.S. 518 (1972) (invalidated a statute that outlawed "opprobrious words or abusive language tending to cause a breach of the peace" after a man threatened to kill a police officer who was arresting him); *Lewis v. City of New Orleans*, 415 U.S. 130 (1974) (overturned a conviction for cursing at police on overbreadth grounds); *City of Houston v. Hill*, 482 U.S. 451 (1987) (invalidated an ordinance criminalizing verbal abuse of police officers); *R.A.V.*, 505 U.S. 377 (1992) (overturned an ordinance that made it a crime to place a burning cross or swastika anywhere "in an attempt to arouse anger or alarm on the basis of race, color, creed, or religion").

[14] Nadine Strossen, *Regulating Racist Speech on Campus: A Modest Proposal?*, 1990 DUKE L.J. 484, 510 (1990), viewable at https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3116&context=dlj.

[15] *Gooding,* 405 U.S. 518 at 525.

[16] *United States v. Bartow*, 997 F.3d 203, 211 (4th Cir. 2021) ("The Court has so narrowed the 'fighting words' exception that it has not upheld a criminal conviction under the doctrine since *Chaplinsky* itself.").

[17] David Mack, *The C-Word Is Everywhere Right Now — And Not in a Bad Way*, ROLLING STONE (May 15, 2023) https://www.rollingstone.com/culture/culture-features/c-word-is-everywhere-lgbt-tucker-carlson-1234735324/ ("The c-word is being increasingly, if gradually, reclaimed . . . It's part of a long tradition of co-opting taboo words' power. Since identity politics is now such a common and explicit part of public discourse, it makes sense that words intended as weapons against particular groups would, in some cases, be reappropriated by their targets as a way of blunting those weapons and redirecting their force.").

[18] *See, e.g.*, *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 675, 679, 683 (6th Cir. 2001) (First Amendment protected instructor's use of words "lady" "girl," "faggot," "nigger," and "bitch" in course on "language and social constructivism," as they were germane to the instructor's lecture).

War were boiling over.[19] While acknowledging that the "four-letter word displayed by Cohen in relation to the draft is not uncommonly employed in a personally provocative fashion," there was no evidence that he used the word as a "direct personal insult" with the intent of "provoking a given group to hostile reaction."[20] Nor was there any "showing that anyone who saw Cohen was in fact violently aroused or that appellant intended such a result."[21] The Court explicitly stated that the government has no constitutional authority to "forbid particular words," recognizing that it "might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views."[22]

The amendments go so far as to ban these words regardless of the good-faith intentions of the speaker, simply because they *may* cause offense. But under the First Amendment, the intent, context, and effect of the speech matters, and the constitutional boundaries are far broader than the motion suggests. Even malicious and targeted use of a racial epithet is not *per se* unprotected speech. In a recent ruling, the U.S. Court of Appeals for the Fourth Circuit unanimously reversed the conviction of a white man's intemperate use of the word "nigger" to a black store clerk since there was no evidence it was likely to provoke an immediate violent reaction: "The record contains no evidence that Bartow employed other profanity, repeated the vile slur, or issued any kind of threat, let alone one dripping with racism."[23] The court also noted the virtual obsolescence of the fighting words doctrine under *Chaplinsky*, a precedent which alone could not sustain the conviction.[24] Any categorical ban of epithets on the grounds they constitute "fighting words" or incitement will not withstand constitutional scrutiny.

There are many instances in which a speaker at a city council meeting may use an epithet in a manner that is germane to an issue of public interest or non-disruptive. For example, speakers may choose to recite an epithet while quoting an elected official from body camera footage of an arrest, quoting a city staffer using epithets on social media, or quoting epithets in a book available in the young adult section of a local library. In fact, just last month, a speaker was unlawfully ejected from a town meeting in Dover, New Jersey, for quoting the mayor's use of the words "cunt" and "pussy" while referring to a female elected official in a viral video.[25] Less polite uses of epithets that are unaccompanied by disruption are also protected speech. If a speaker is criticizing the Council and uses an epithet to express frustration where no disruption occurs, the Council cannot censor this speech even if it finds it deeply offensive or counterproductive.[26]

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[19] *Cohen,* 403 U.S. 15.

[20] *Id.* at 20.

[21] *Id.*

[22] *Id.* at 26.

[23] *Bartow*, 997 F.3d 203, 211 (4th Cir. 2021).

[24] *Id.*; *see also Brandenburg*, 395 at 447 (First Amendment protected Klan member's speech, including his statement, "Personally, I believe the nigger should be returned to Africa, the Jew returned to Israel.").

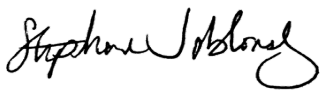
[25] SATIVA CROSS, *Ignorance Is No Excuse Tour: Dover*, YOUTUBE, https://www.youtube.com/live/AOtHy_jnPDs?feature=shared&t=90

[26] *See Johnson*, 491 U.S. at 414; *see also Matal v. Tam*, 582 U.S. 218, 243 (2017) ("Giving offense is a viewpoint."); *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995) (viewpoint

This is not to say the Council is without recourse to address disruptions or unprotected speech at public meetings. However, in order to do so in accord with the First Amendment, it must consider the intent and context of the speech. If a speaker's comments are intended to and likely to incite violence, make a true threat, focus on wholly irrelevant topics, or if a speaker refuses to yield the floor, starts arguing back and forth with an audience member, or otherwise engages in unprotected conduct, the Council may take appropriate action. If an audience member disrupts a speaker because they dislike what was said, the Council may warn and, if necessary, remove the disrupter—not punish the speaker. But pre-emptive word bans are unconstitutional and, as the amendments reflect, the Council seems to be aware that a wholesale ban would invite litigation. When it comes to protected speech that listeners find objectionable or wrongheaded, "the remedy to be applied is more speech, not enforced silence."[27]

For all these reasons, FIRE calls on the Los Angeles City Council to reject Motion 16-1104-S3.

Sincerely,



Stephanie Jablonsky
Senior Program Counsel, Public Advocacy

Cc: Mandy Morales, Legislative Assistant

discrimination is an "egregious" form of censorship, and the "government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction"); *New York Times Co. v. Sullivan*, 376 U.S. 254, 269–70 (1964) ("It is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions," and the First Amendment reflects a "profound national commitment to the principle that debate on public issues shall be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.").

[27] *Whitney v. California*, 274 U.S. 357, 377 (1927).