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June 9, 2022

Mayor Joel Flores and Councilmembers
City of Greenacres
5800 Melaleuca Lane
Greenacres, FL 33463

Re: Campaign-Free Zone

Dear Mayor and Councilmembers:

This letter is in response to the Council's desire to discuss the regulation of political campaigning in Council Chambers. The following is an overview of when, where and how a municipality may restrict First Amendment rights in various public areas and when and where a "campaign-free zone" may be established.

The United States Supreme Court has employed "forum" analysis to determine when a governmental entity, in regulating property in its charge, may place limitations on speech. *Christian Legal Soc'y Chapter of the Univ. of Cal. V. Martinez*, 561 U.S. 661 (2010). The Supreme Court identified three such fora: the "traditional public forum" (public streets, sidewalks, parks, etc.); the "nonpublic forum" (public property which is not by tradition or designation a forum for public communication); and the "limited public forum" (property which the state [or a municipality] has opened for use by the public as a place for expressive activities). *United Faculty of Florida v. Florida Bd. of Regents*, 585 So. 2d 991, 997 (Fla. 1st DCA 1991), citing *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). Meetings of local governing bodies have been found to be a limited public forum. See *Cleveland v. City of Cocoa Beach*, 221 Fed. Appx. 875 (11th Cir. 2007).

In limited public forums, the government may limit its use to the discussion of certain subjects or to speech by certain speakers, and any restrictions on access to a limited public forum must be reasonable and viewpoint neutral. *Christian Legal Soc. Chapter of the University of California, Hastings College of Law v. Martinez*, 130 S. Ct. 2971, 2984-2985 (2010). The case of *Cleveland*

v. City of Cocoa Beach, Florida, 221 Fed. Appx. 875 (C.A. 11 (Fla.) 2007) provides guidance on this issue. In *Cleveland*, an audience member at a city council meeting brought a civil rights action against the city, its former mayor, and the city attorney alleging that his First Amendment rights were violated when the mayor told him he could not wear a T-shirt at a city council meeting that contained a political message regarding an ongoing local mayoral race. See *Cleveland v. City of Cocoa Beach, Florida*, 221 Fed. Appx. 875 (C.A. 11 (Fla.)). The United States District Court for the Middle District of Florida granted summary judgment in favor of the city and the plaintiff appealed to the 11th Circuit United States Court of Appeals.

The Court of Appeals held that “it was reasonable for the City to establish a campaign-free zone for the purpose of limiting political influence on its employees and conducting orderly and efficient meetings.” See *Id.* at 879. The court found that there is a significant governmental interest in conducting orderly, efficient meetings of public bodies. See *Id.* The court found that the “...forum was not open for the purpose of campaigning. ‘As a limited public forum, a city council meeting is not open for endless public commentary speech but instead is simply a limited platform to discuss the topic at hand.’” See *Id.* The court pointed out that the “City Commission meetings serve the purpose of conducting the city business and are not for the purpose of providing a venue to express political election views.” See *Id.* at 880. Therefore, in a limited public forum, there may be content-based restrictions (i.e., no campaigning) as long as the restrictions are reasonable, “given the limited forum’s purpose” but the restrictions may not be used to discriminate against a particular viewpoint. See *Id.* at 878-879.

Further, the City has limited public comments during meetings to only the following subject matters: agenda items (required pursuant to section 286.0114, Florida Statutes) and City policy issues (see Council Policy No. 7, at paragraph 4). Based upon these limitations and the holding in *Cleveland*, the City may establish a campaign-free zone, in the City Council Chambers, during its Council meetings. The campaign-free zone must be applied across the board and not discriminate against a particular candidate or issue.

For your review and discussion, we have attached a draft resolution for the City’s campaign-free zone. Should you have any questions regarding the above, please feel free to contact me.

Sincerely,



GLEN J. TORCIVIA, ESQ.

GJT/jhrh

Encl.

cc: Andrea McCue, City Manager

Quintella Moorer, CMC, City Clerk

RESOLUTION NO. 2022-__

A RESOLUTION ADOPTED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, ADOPTING A POLICY ESTABLISHING CITY COUNCIL MEETINGS AS A CAMPAIGN-FREE ZONE; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, Council meetings are not open for endless public commentary speech but instead are a limited platform to discuss City business; and

WHEREAS, section 286.0114, Florida Statutes, requires the City to provide an opportunity for public comment on agenda items, and Council Policy No. 7 limits public discussion on non-agenda items to City policies only; and

WHEREAS, based upon such statutory requirement, Council policy, and applicable Florida caselaw (including, but not limited to, *Cleveland v. City of Cocoa Beach, Florida*, 221 F.App'x 875 (Fla. 11th Cir. 2007)), the Council's meetings are a limited public forum, and the Council may limit the use of such meetings to the discussion of certain subjects as long as such restrictions are reasonable and viewpoint neutral; and

WHEREAS, the City Council finds that it is of the utmost importance to limit political influence on City employees and to conduct orderly and efficient Council meetings; and

WHEREAS, the Council deems it advisable to adopt a "campaign-free zone" policy during Council meetings; and

WHEREAS, the Council finds that such policy is reasonable and viewpoint neutral and that it serves a public purpose and is in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, THAT:

Section 1. The foregoing recitals contained in the preamble to this Resolution are incorporated herein by this reference.

Section 2. The City Council of the City of Greenacres hereby adopts the following policy to establish a “campaign-free zone” during council meetings:

Campaign-Free Zone. It is of the utmost importance to limit political influence on City employees and to conduct orderly and efficient council meetings. Therefore, all City council meetings shall be considered “campaign-free zones”. The following are prohibited during council meetings: (a) the wearing, carrying, and/or displaying of political campaign materials and/or political campaign attire; (b) the distribution of political campaign materials; (c) public comments related to political campaigns (except that, if a political referendum or ballot question is discussed by the council, public comment on said political referendum or ballot question may be permitted). Public comments relating to political campaigns are defined as public comments related to a candidate for office, referendum, or ballot question in an upcoming election. Individuals violating the campaign-free zone rules during council meetings shall be asked to cease the prohibited activity. Failure to cease the prohibited activity after request shall result in removal of the individual from the council meeting.

Section 3. Severability. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 4. Conflicts. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

Section 5. Effective Date. This resolution shall be effective upon its adoption.

RESOLVED AND ADOPTED this ____ of day of _____, 2022.

Joel Flores, Mayor

Attest:

Quintella Moorer, City Clerk

John Tharp, Deputy Mayor

Peter Noble, Council Member, *District II*

Judith Dugo, Council Member, *District III*

Susy Diaz, Council Member, *District IV*

Paula Bousquet, Council Member,
District V

Approved as to Form and Legal Sufficiency:

Glen J. Torcivia, City Attorney