



July 27, 2026

Gladwin City Council
City of Gladwin
1000 W. Cedar Ave.
Gladwin, MI 48624

Sent Via Certified Mail

Re: Unconstitutional Provisions in City of Gladwin Employment Contract

Members of City Council:

My name is Stephen Delie, and I am writing to you on behalf of the Mackinac Center Legal Foundation's client, Mayor Sarah Kile. Based upon our review, terms of the City of Gladwin's ("City") employment contract with City Administrator Kimberly Hines clearly violate the First Amendment rights of not only our client, but of City employees and officials more generally.

Although these terms constitute both past and ongoing violation of constitutional rights, it is our understanding that the City is currently renegotiating the City Administrator's contract. To avoid the burden and expense litigation would create for the City, this letter serves to advise you of the severe constitutional defects in the existing contractual language. Mayor Kile hopes that this letter helps to ensure that the City adequately respects the First Amendment rights of the City's employees and officials when negotiating a new City Administrator contract, thereby rendering litigation unnecessary. Please note, however, that should the same or substantially similar language be adopted as part of the City Administrator's new contract, litigation to defend the constitutional rights of our client and other City officials and employees will ensue.

1. Factual Background

On August 4, 2025, the City entered into an employment agreement ("Agreement") with the City Administrator. **Exhibit 1, City Administrator Employment Agreement.** This Agreement remains effective until August 3, 2026, although it is our understanding that the City is currently renegotiating the terms of that Agreement for an additional three-year period.¹ The Agreement features a non-disparagement clause in Section 9, which states:

"City officials, including elected Council members, employees, and agents, shall refrain from making any public or private statement (written, spoken, or implied) that would reasonably be viewed as derogatory, false, defamatory, or professionally damaging to Employee. This includes statements made in public meetings, on social media, to the press, or within internal communications.

¹ See 2026.06.15 City of Gladwin City Council Meeting Minutes, available at: <https://cms9files.revize.com/gladwinmi/CC%20Minutes%2006.15.26-As%20Corrected.pdf?t=202606250822140>.



This clause does not prohibit Council members from fulfilling their lawful duties or expressing legitimate performance concerns through proper procedural channels, including closed session evaluations or disciplinary discussions in accordance with the Open Meetings Act.

Violation of this clause by any City official may constitute a breach of ethical standards and may subject the City to civil liability for reputational harm.”

Exhibit 1.

This non-disparagement clause is flagrantly unconstitutional and must be remedied in any subsequent employment agreements if the City intends to avoid liability for constitutional torts.

2. Section 9 of the City Administrator’s contract violates the constitutional rights of Mayor Kile, as well as the City’s public officials and employees generally.

Section 9 of the Agreement represents a clear violation of the First Amendment rights of not only Mayor Kile, but of all the city employee and officials it purports to bind. The clause is unconstitutionally vague, overbroad, and is facially invalid. Additionally, Section 9 of the Agreement discriminates based on viewpoint, and it is not narrowly tailored to any legitimate governmental interest able to justify such discrimination. These restrictions, as applied to Mayor Kile, have also acted (and continue to act) as an unlawful prior restraint on her speech, and have denied her the ability to freely communicate with her constituents and fellow employees. In short, the non-disparagement clause of the Agreement violates the United States Constitution in several ways, each of which has exposed the City to legal liability.

A. Section 9 of the Agreement is facially invalid due to its overbreadth

Section 9 of the Agreement is facially unconstitutional because it is an overly broad restriction on speech. A contract term which limits speech is unconstitutionally overbroad when it “prohibits a ‘substantial amount of protected speech both in an absolute sense and relative to [the term’s] plainly legitimate sweep[.]’” *Speet v. Schuette*, 726 F.3d 867, 872 (6th Cir. 2013) (citation omitted). A law is substantially overbroad when there is “a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court.” *N.Y. State Club Ass’n v. City of N.Y.*, 487 U.S. 1, 11 (1988) (citation omitted). A law is also facially overbroad when that law “reaches a substantial amount of constitutionally protected conduct.” *City of Houston*, 482 U.S. 451, 458-59 (1987) (citation omitted).

Section 9 of the Agreement reaches a substantial amount of constitutionally protected conduct. It prohibits Mayor Kile, as well as other City employees and officials, from making statements that can “reasonably be viewed as derogatory, false, defamatory, or professionally damaging” to the City Administrator. It prohibits such statements in both “public or private.” It touches on core First Amendment speech, such as public comments during meetings or statements to the press that would criticize the City Administrator. And it restricts the speech of Mayor Kile and other City



officials and employees on social media. Each of these restrictions, individual and collectively, operate as an unconstitutional prior restraint on Mayor Kile’s First Amendment rights.

These same restrictions apply equally to all “City officials...elected [City] council members, employees and agents.” As a result, Mayor Kile and other City employees are essentially unable to discuss the City Administrator in any light that could be even perceived as negative, except for statements made behind closed doors in extremely limited circumstances. Section 9 is overly broad, and it prevents Mayor Kile and other City employees from discussing information that is essential to the public’s right to be informed about those officials purporting to work on their behalf. Given its remarkable overbreadth, we believe that Section 9 of the Agreement would be stricken by any reviewing court as unconstitutional.

B. Section 9 of the Agreement is unconstitutionally vague.

Section 9 of the Agreement is also unconstitutionally vague. A regulation is unconstitutionally vague and facially invalid when “the statute’s very existence may cause others before the court to refrain from constitutionally protected speech or expression.” *Virginia v. Am. Booksellers Ass’n Inc.*, 484 U.S. 383, 392-93 (1988). A restriction on First Amendment activity is impermissibly vague “[w]hen one must guess what conduct or utterance may...” result in a penalty to the speaker. *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 604 (1967), citing *Speiser v. Randall*, 357 U.S. 513, 526 (1958).

Section 9 of the Agreement is so inherently vague that it is largely impossible for Mayor Kile or other City officials or employees to know what speech is prohibited. Section 9 of the Agreement prohibits more than “derogatory” or “professionally damaging”² speech. While such a restriction would by itself represent an unconstitutional, viewpoint-based, vague and overly broad unconstitutional restriction on speech, Section 9 goes further by restricting any speech that can “reasonably be viewed” as falling within one of those categories. As a result, Mayor Kile and other City employees are left guessing as to whether their speech could violate Section 9, as there is no way in which they are able to determine what speech could be “reasonably viewed” as “derogatory” or “professional damaging.” The vagueness of Section 9 requires Mayor Kile and other City officials and employees to refrain from not only derogatory or professionally damaging speech, but any speech they suspect could be possibly construed in such a manner. This degree of vagueness is entirely unconstitutional.

C. Section 9 of the Agreement is facially invalid because it discriminates based on viewpoint.

Section 9 of the Agreement is facially unconstitutional because it restricts messages based on the content of speech. “It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.” *Rosenberger v. Rector and Visitors of the Univ. of Virginia*, 515 U.S. 819, 828 (1995) (citation omitted). “Viewpoint discrimination is thus an

² Mayor Kile does not argue that restrictions on false or defamatory speech are unconstitutionally vague.



egregious form of content discrimination.” *Id.* “A regulation of speech is facially content based under the First Amendment if it targets speech based on its communicative content—that is, if it applies to a particular speech because of the topic discussed or the idea or message expressed.” *City of Austin, Texas v. Regan Nat’l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022) (internal quotations omitted, cleaned up).

Section 9 of the Agreement is a content-based restriction, as it only prohibits certain kinds of speech based on the nature of the message being expressed. It targets speech based on its communicative content, as it applies only to speech that can “reasonably be viewed as derogatory, false, defamatory, or professionally damaging,” but does not apply to positive speech about the City Administrator. See, e.g., *Ison v. Madison Loc. Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 895 (6th Cir. 2021) (recognizing that excluding speech merely on the grounds that it is critical of public officials constitutes viewpoint discrimination). Under Section 9 of the Agreement, Mayor Kile (and other City employees and officials) are entirely permitted to speak about the City Administrator, so long as they do so in a positive or neutral way. Put another way, so long as their speech cannot “reasonably be viewed as derogatory, false, defamatory, or professionally damaging,” Mayor Kile and City employees or officials can speak freely about the City Administrator. Negative speech, however, subjects the City to potential liability if it can “reasonably be viewed” as falling within one of those categories.

Additionally, the restrictions in Section 9 of the Agreement are based on the content and viewpoint of the speech and are therefore “presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Natl’l Inst. Of Family & Life Advocates v. Becerra*, 585 U.S. 755, 766 (2018), quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Restrictions on speech can only be permissible when the restrained speech poses “a grave threat to a critical government interest or to a constitutional right” and the restraint on speech is “narrowly drawn and [is] the least restrictive means available.” *Cnty. Sec. Agency v. Ohio Dept. of Com.*, 296 F.3d 477, 485 (6th Cir. 2002) (citations omitted).

The City’s interests do not rise to the level of a grave threat to critical government interest or the protection of a constitutional right. “Derogatory” or “professionally damaging” speech about the City Administrator may lead to criticism of the City, its hiring practices, or the City officials who hired her. Such speech may also lead the City, or the City Administrator, to terminate their employment relationship, which would require the City to hire a new city administrator. At worst, such speech may lead the City Administrator to sue the City. None of these interests rise to the level of a grave threat that would justify the implementation of a prior restraint against Mayor Kile and other City employees and officials.

Nor can Section 9 of the Agreement be fairly described as narrowly tailored. As previously stated, Section 9 of the Agreement reaches beyond false and defamatory statements, and it encompasses statements that are “derogatory” or “professionally damaging,” or that can “reasonably be viewed” as such. It prohibits such statements in both “public or private.” It prohibits statements to the media, and during public comment periods at public meetings. Taken together, these provisions do not represent a narrow restriction on Mayor Kile’s speech; instead, they largely bar her from speaking a particular message in nearly every public forum. Worst still, whether a statement



offends Section 9 of the Agreement is left to the nebulous determination of what can be “reasonably viewed” as falling within its prohibitions. In short, Section 9 not only fails to qualify as “narrowly tailored”—it can barely be considered to have been tailored at all. As such, it fails to satisfy the high constitutional bar required to uphold a viewpoint-based restriction on speech.

D. Section 9 of the Agreement, as applied to Mayor Kile, is an invalid restraint of her First Amendment rights.

Section 9 of the Agreement is also unconstitutional as applied to Mayor Kile specifically. Mayor Kile takes her obligations to her constituents seriously, and that includes the ability to speak freely about problems she sees in City government. The City’s citizens deserve to hear a variety of perspectives about matters of public interest, including whether the City and its officials are working in their best interests. If an individual official is engaged in actions or behaviors that reflect poorly on the City or fails to serve its residents as efficiently as possible, Mayor Kile believes that citizens should be made aware of these issues.

Mayor Kile wishes to exercise her First Amendment right to speak about the City Administrator, and to make the case to the citizens of the City of Gladwin that the City Administrator should not continue to be employed as by the City. She has refrained from doing so, however, as Section 9 of the Agreement would subject the City (and therefore its taxpayers) to legal liability for violating the non-disparagement clause. Thus, Section 9 of the Agreement represents a quintessential prior restraint on Mayor Kile’s speech.

“[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 560 (1976). The intention to engage in expression regulated by policy is sufficient to demonstrate an objective chill of an individual’s speech. *McGlone v. Bell*, 681 F.3d 718, 730 (2012), citing *Babbitt v. United Farm Worker’s Nat’l Union*, 442 U.S. 289, 298 (1979).

Mayor Kile wishes to engage in criticism of the City Administrator which may subject the City to liability under the Agreement. Section 9 of the Agreement, however, has forced Mayor Kile to censor herself when speaking with fellow officials, employees, and constituents. Were it not for the Agreement, Mayor Kile would have raised, and would continue to raise, several concerns she has had about how the City Administrator manages City business, interacts with citizens and City employees, and her general fitness for office. To avoid violating Section 9 of the Agreement, Mayor Kile has restrained herself from expressing this speech. Thus, Section 9 of the Agreement has operated, and continues to operate, as an unconstitutional prior restraint on Mayor Kile’s speech and violates her First Amendment rights.

3. Conclusion and Requested Relief

For the reasons identified above, we believe that any litigation challenging Section 9 of the Agreement as an unconstitutional restriction on speech would prevail in Federal court. Such litigation would expose the City to not only actual damages for violating Mayor Kile’s constitutional rights, but also attorneys’ fees and injunctive and declaratory relief.



We recognize, however, that the City is in the process of renegotiating its employment agreement with the City Administrator. As such, Mayor Kile does not wish to expose the City to a lawsuit if it is possible to avoid the burden and expense of litigation by amending the offending terms of the current Agreement as part of those negotiations.

To avoid the necessity of litigation, we request that the City recognize the constitutional defects with the current language of the Agreement described in this letter. We further request that, as part of the negotiations for the City Administrator's new contract, the City correct those constitutional defects and avoid adopting any substantially similar non-disparagement provision that would violate the First Amendment rights of City officials or employees.

Mayor Kile hopes that, through this letter, the City can correct its unconstitutional actions while avoiding exposing the taxpayers of the City to the expense of unnecessary litigation. Please be advised, however, that should the City persist in violating the constitutional rights of its employees, we will be forced to file a lawsuit to ensure that those rights are vindicated.

Sincerely,

Stephen Delie (P80209)
Mackinac Center Legal Foundation
Attorney for Mayor Sarah Kile
140 West Main Street
Midland, MI 48640
delie@mackinc.org



Exhibit 1: City Administrator Employment Agreement

CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

This Agreement ("Agreement") made and entered into this 4th day of August 2025, by and between the City of Gladwin, Michigan, a municipal corporation, hereinafter called "the City", and Kimberly Hines, hereinafter called "the Employee", both of whom understand and agree as follows:

WITNESSETH:

WHEREAS, the City desires to employ the services of the Employee as City Administrator of the City of Gladwin; and

WHEREAS, it is the desire of the City to:

1. Secure and retain the services of the Employee as City Administrator;
2. Provide a fair and equitable method of compensation for the Employee;
3. Establish certain conditions of employment;
4. Provide a means for terminating the Employee's services when necessary with due regard for the Employee's rights and the City's responsibilities;
5. Encourage full work productivity by maintaining an atmosphere of mutual understanding, cooperation, and respect;

WHEREAS, the Employee desires to accept employment as City Administrator;

NOW THEREFORE, for and in consideration of the mutual promises herein, the parties agree as follows:

Section 1. TERM

The term of this Agreement shall be for one (1) year, commencing on August 4, 2025, and ending on August 3, 2026, unless otherwise extended in writing or terminated in accordance with this Agreement.

Section 2. DUTIES

The Employee shall serve as the Administrator of the City and act as a fiduciary for the organization. Responsibilities include overseeing City departments, implementing policy, managing operations, supervising employees, and executing the administrative functions of the City as provided under the City Charter, ordinances, and applicable law.

The Employee shall devote such time, attention, and energies to the business of the Employer as is necessary for the Employee to satisfactorily perform his/her duties as City Administrator.

The City acknowledges that the Employee maintains outside business interests. The Employee may continue to engage in such activities, if they do not interfere with the performance of her duties as City Administrator, do not create a conflict of interest, and remain in compliance with applicable provisions of the City Charter, ordinances, and state or federal law.

Section 3. SALARY AND COMPENSATION

The Employee shall receive an annual salary of \$118,000, paid biweekly. This is an exempt, salaried position, not eligible for overtime.

In addition to the base salary and benefits provided herein, the City shall provide the Employee with the following additional compensation:

1. **Car Allowance:** A car allowance of one hundred dollars (\$100) biweekly, totaling two thousand six hundred dollars (\$2,600) annually, which shall be paid through the City's regular payroll system.
2. **Phone Stipend:** A monthly phone stipend of fifty dollars (\$50) to partially offset the cost of mobile phone usage related to City business.

Section 4. BENEFITS

1. **Vacation Leave:** The Employee shall be granted four (4) weeks, or one hundred sixty (160) hours, of vacation leave upon commencement of this Agreement. Vacation leave shall not carry over beyond the term of this Agreement. If the Employee serves the full term of the Agreement or if the Agreement is not renewed, any unused vacation time shall be paid out at the Employee's then-current rate of pay upon separation.
2. **Sick Leave:** The Employee shall be credited with twelve (12) days, or ninety-six (96) hours, of sick leave upon commencement of this Agreement. Sick leave shall not accrue on a monthly basis. Upon separation from employment without cause or upon the natural expiration of this Agreement, the Employee shall be compensated for fifty percent (50%) of any unused sick leave at the Employee's then-current rate of pay.
3. **Personal Leave:** The Employee shall be granted two (2) personal leave days upon commencement of this Agreement. Unused personal leave shall not carry over and shall be paid out at the Employee's then-current rate of pay upon completion of the full contract term.
4. **Health/Dental/Vision Insurance:** The Employee shall be eligible for health, dental, and vision insurance benefits in accordance with the terms and conditions outlined in the City's employee handbook and as provided to other eligible employees. Health insurance coverage, currently provided through Blue Cross Blue Shield, shall begin on the first day of employment. The City shall contribute eighty percent (80%) of the premium cost, with the Employee responsible for the remaining twenty percent (20%), consistent with the City's cost-sharing policy and in compliance with Michigan's Publicly Funded Health Insurance Contribution Act ("hard cap" law). Dental insurance shall be provided at no cost to the Employee. Vision coverage shall follow the same cost-sharing structure as health insurance.
5. **Health Savings Account:** If the Employee is enrolled in a high-deductible health plan and otherwise eligible to participate in a Health Savings Account (HSA), the City shall contribute five hundred dollars (\$500) annually to the Employee's HSA. This benefit shall be administered in accordance with applicable IRS regulations and the City's employee handbook.
6. **AD & D Insurance:** The Employee shall be eligible for Accidental Death and Dismemberment (AD&D) insurance coverage on the same terms and conditions as provided to other City employees, as set forth in the City's employee handbook.

7. **Life Insurance:** The City shall provide the Employee with a term life insurance policy in an amount equal to one time (1x) the Employee's annual base salary. The full cost of the premium shall be paid by the City.
8. **Retirement:** The City shall contribute an amount equal to eight percent (8%) of the Employee's base salary to an ICMA-RC 401(a) retirement plan. The Employee shall contribute an additional three percent (3%) of her base salary to the same plan. Participation is subject to the same vesting schedule as that applicable to other enrolled employees. The Employee may also choose to participate in the City's 457 deferred compensation plan on an optional basis.

Section 5. PERFORMANCE EVALUATION

The City Council may conduct a written performance evaluation, based on mutually agreed goals and statutory responsibilities. The evaluation shall be discussed in person and documented in the Employee's personnel file.

Section 6. DUES & SUBSCRIPTIONS

The City shall budget and pay for professional dues, memberships, and subscriptions reasonably necessary for the Employee's professional development, growth and advancement within its sole discretion as City Administrator.

Termination for Cause must be approved by majority vote of the full City Council during a publicly noticed meeting, following seven (7) calendar days' written notice and the opportunity for Employee to respond.

Section 7. SEPARATION & TERMINATION

1. **At-Will Employment:** The Employee serves in an at-will capacity and may be terminated at any time, with or without cause, by the City in accordance with applicable law and the terms of this Agreement. Likewise, the Employee may resign at any time, with or without cause, by providing written notice to the City.
2. **Separation Upon Completion of Term:** If the Employee completes the full one-year term of this Agreement, the City shall compensate the Employee for any unused vacation, personal, and eligible sick leave at the Employee's then-current rate of pay.
3. **Separation by Resignation:** If the Employee resigns prior to the completion of the one-year term, any unused leave shall be forfeited unless the Employee provides at least thirty (30) days' written notice.
4. **Termination for Cause:** In the event the Employee is terminated for cause, all rights to leave payout under this Agreement shall be forfeited.

SECTION 8. INDEMNIFICATION

To the fullest extent allowed by law, the City shall indemnify and defend Employee against any claims, suits, or liabilities arising from actions taken in good faith and within the scope of her official duties. This

includes legal defense, settlements, and damages. Indemnification survives separation from employment for actions taken during the contract term.

SECTION 9. NON-DISPARAGEMENT

City officials, including elected Council members, employees, and agents, shall refrain from making any public or private statement (written, spoken, or implied) that would reasonably be viewed as derogatory, false, defamatory, or professionally damaging to Employee. This includes statements made in public meetings, on social media, to the press, or within internal communications.

This clause does not prohibit Council members or others from fulfilling their lawful duties or expressing legitimate performance concerns through proper procedural channels, including closed session evaluations or disciplinary discussions in accordance with the Open Meetings Act.

Violation of this clause by any City official may constitute a breach of ethical standards and may subject the City to civil liability for reputational harm.

SECTION 10. DISPUTE RESOLUTION

In the event of any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation, or validity thereof, the parties agree to first attempt to resolve the matter amicably through good faith negotiations.

If the parties are unable to resolve the dispute through negotiation within thirty (30) days, the matter shall be submitted to mediation conducted by a mutually agreed-upon mediator. The costs of mediation shall be shared equally by the parties.

If mediation fails to resolve the dispute, either party may pursue any remedies available at law or in equity.

Nothing in this section shall prevent the City from taking any action necessary to comply with applicable laws or to protect its interests.

SECTION 11. DUE PROCESS

Before taking any adverse employment action against the Employee; including, but not limited to, termination, suspension, demotion, or reprimand—the City shall:

1. Provide the Employee with a written statement of the proposed action and the basis for it.
2. Offer the Employee a reasonable opportunity to respond, either in writing or in person;
3. Allow the Employee to present evidence and/or call witnesses, if requested; and
4. Make the final determination in a publicly noticed meeting conducted in accordance with the Michigan Open Meetings Act.

These procedural rights are in addition to any other rights granted under applicable Michigan or federal law.

SECTION 12. GENERAL PROVISIONS

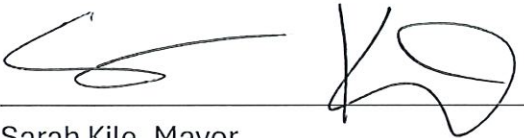
1. This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements, understandings, or representations, whether oral or written, relating to the subject matter herein.
2. Any amendments or modifications to this Agreement must be in writing and signed by both the City and the Employee.
3. If any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remaining provisions, which shall continue in full force and effect.
4. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
5. The parties agree that venue for any legal action arising out of or relating to this Agreement shall be in Gladwin County, Michigan.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.



Kimberly Hines, City Administrator

Date: 8/4/25



Sarah Kile, Mayor

Date: 8/12/25



Marietta Andrist, City Clerk

Date: 8.11.25