



UNIVERSITY OF
GEORGIA

School of Law
First Amendment Clinic
P.O. Box 388
Athens, Georgia 30603
TEL 706.542.1419
Fax: 706.227.5440
FAClinic@uga.edu

October 8, 2020

VIA E-MAIL

Forest Park Mayor Angelyne Butler
abutler@forestparkga.gov

Councilmember Dabouze Antoine
dantoine@forestparkga.gov

Councilmember Hector Gutierrez
hgutierrez@forestparkga.gov

Councilmember Kimberly James
kjames@forestparkga.gov

Councilmember Allan Mears
amears@forestparkga.gov

Councilmember Latresa Wells
lakins@forestparkga.gov

Forest Park City Attorney Mike Williams
mwilliams@forestparkga.gov

RE: Matter of Robin Kemp - Open Meetings Act & First Amendment Violations

Dear Mayor Butler, Council Members & Mr. Williams:

We write on behalf of Ms. Robin Kemp, a journalist who covers news in Clayton County, and who was ejected from two Forest Park City Council meetings in violation of Georgia's Open Meetings Act (OMA), O.C.G.A. § 50-14-1, and the First Amendment of the United States Constitution. In further violation of these laws, the City of Forest Park ("the City") has for months failed to provide the public with effective, synchronous access to its City Council meetings. We write in the hopes that these matters can be resolved without further legal action or the involvement of the Office of the Attorney General, with whom we have also filed a complaint.

As you are likely aware, the OMA requires that the meetings of all public agencies in Georgia “at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon” be open to the public. O.C.G.A. §§ 50-14-1(a)(2), (b)(1). The OMA further requires that “[t]he public at all times *shall be afforded access* to meetings declared open to the public.” O.C.G.A. § 50-14-1(c) (emphasis added). Moreover, any official action taken at a meeting “which is not open to the public as required by [the OMA] shall not be binding.” O.C.G.A. § 50-14-1(b)(2). Finally, independent of the OMA, “the First Amendment protects the right to gather information about what public officials do on public property,” even including a right to independently record matters of public interest. *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000).

Here, Ms. Kemp was denied in-person access to two regularly scheduled City Council meetings that other members of the public were allowed to attend. First, on September 21, 2020, at Mayor Butler’s request, Ms. Kemp was escorted by Police Chief Nathaniel Clark out of the Council meeting in violation of the OMA.¹ The agenda for this meeting made clear that it was a public meeting, stating, “Welcome to the Mayor and Council meeting of the City of Forest Park[.] This meeting is open to the public,” and “The Council Meetings will be livestream [sic] and available on the City’s YouTube page.”² Despite there being several members of the public in physical attendance, all of whom – including Ms. Kemp – wore masks and observed social distancing guidelines, Ms. Kemp was the only one we are aware of who was asked to leave.³ This occurred within minutes of Ms. Kemp entering the meeting chambers and quietly observing the proceedings. When Ms. Kemp asked the Police Chief why she was being escorted out, he told her that it was at the Mayor’s direction.⁴

Ms. Kemp was ejected from a second regularly scheduled City Council meeting on October 5, 2020.⁵ The agenda for the meeting again stated, “The Council Meetings will be livestream [sic] and available on the City’s YouTube page,” indicating that it was a public meeting.⁶ Ms. Kemp recorded the brief encounter on video.⁷ Immediately after Ms. Kemp had entered the meeting chambers and taken a seat, Mayor Butler stated, “We are not open to the public.” Ms. Kemp

¹ Robin Kemp, “City of Forest Park releases audio of Sept. 21 council meeting,” Sep. 24, 2020, *Clayton Crescent*, <https://claytoncrescent.org/city-of-forest-park-releases-audio-of-sept-21-council-meeting/> (last visited Oct. 8, 2020).

² City of Forest Park Mayor and Council Work Session Agenda, Sep. 21, 2020, <https://www.forestparkga.org/documents/09.21.2020%20Meeting%20Agenda.pdf> (last visited Oct. 8, 2020).

³ Kemp, *supra* note 1.

⁴ *Id.*

⁵ Robin Kemp, “Forest Park Police remove Clayton Crescent from 2nd council meeting,” Oct. 5, 2020, *Clayton Crescent*, <https://claytoncrescent.org/forest-park-police-remove-clayton-crescent-from-2nd-council-meeting/> (last visited Oct. 6, 2020).

⁶ City of Forest Park Mayor and Council Work Session Agenda, Oct. 5, 2020, <https://www.forestparkga.org/documents/10.05.2020%20Mayor%20and%20Council%20Meeting%20Agenda.1.pdf> (last visited Oct. 6, 2020).

⁷ Kemp, *supra* note 5 (video included in article).

responded that she was a reporter there to cover the open meeting, and displayed her press identification. The Mayor and Police Chief Clark then conferred and at the Chief's direction, Police Officer Mike Gentry approached Ms. Kemp. Ms. Kemp asked Officer Gentry if he was removing her, and he replied, "Yes, ma'am." The video shows several people besides council members in attendance at this October 5th meeting, but as far as we are aware, Ms. Kemp was the only person asked to leave.

To be sure, Ms. Kemp's reporting has been persistent and critical of the City, and of Mayor Butler in particular. This makes all the more troubling that the Mayor has excluded Ms. Kemp from two public meetings. Not only do these actions contravene the OMA -- which exists to insure government transparency and to protect citizens who seek to hold public officials accountable -- but these actions also suggest the City is unconstitutionally retaliating against Ms. Kemp based on the content and perspective of her reporting.

In addition to unlawfully ejecting Ms. Kemp from public meetings, the City has failed to provide her or other members of the public with effective synchronous access to its City Council meetings, in violation of O.C.G.A. § 50-14-1(c).⁸ To wit, Zoom links have been nonfunctioning and/or Facebook Live audio has been largely unintelligible and inaudible including, most recently but without limitation, on August 17, 2020, September 21, 2020 and October 5, 2020.⁹ When poor sound quality has prevented members of the public, including Ms. Kemp, from being able to hear what is being said and voted on during meetings, the City has advised the public to submit an Open Records Act request in order to obtain the inaudible information.¹⁰ This falls woefully short of compliance with the synchronous access the OMA requires. *See* O.C.G.A. § 50-14-1(g) ("Under circumstances necessitated by emergency conditions involving public safety . . . agencies or committees thereof . . . may meet by means of teleconference so long as the notice required by this chapter is provided *and means are afforded for the public to have simultaneous access to the teleconference meeting.*") (Emphasis added). The City cannot shirk its obligations under the OMA by placing the onus on constituents to make records requests for information they were entitled to obtain in the moment of the meeting via in-person or remote observation.

In addition to seeking the City of Forest Park's compliance with the First Amendment and the OMA, we also seek consistency in the City's administration of its policies and practices -- neither of which are presently occurring. The City declared a shut-down of City parks and buildings in early March 2020 because of the COVID-19 pandemic¹¹ and has cited the pandemic

⁸ *Id.*

⁹ Kemp, *supra* notes 1 and 5.

¹⁰ September 21, 2020 Meeting Audio, *YouTube*, <https://www.youtube.com/watch?v=6CvNN47oeLg> ("Due to technical difficulties during this meeting, the visual is not available for stream. However, the clear audio file is available for your streaming pleasure. Audio for any public meeting can always be requested through an Open Records Request, according to OCGA 50-18-70.") (last visited Oct. 7, 2020)

¹¹ Robin Kemp, "Forest Park shuts down all city facilities and parks due to COVID-19," Mar. 16, 2020, *Clayton News*, https://www.news-daily.com/news/forest-park-shuts-down-all-city-facilities-and-parks-due-to-covid-19/article_4055e486-67ba-11ea-b77a-4351ec19816b.html (last visited Oct. 6, 2020).

as the reason why the City is purporting to offer remote access. However, based on at least the last two City Council meetings -- September 21, 2020 and October 5, 2020 -- the restriction on in-person attendance appears to be operating at the unfettered discretion of the Mayor since some members of the public have been allowed to attend, although not Ms. Kemp. Evidencing further inconsistency, the City has recently hosted events in City facilities and on City grounds that have been open to in-person attendance by members of the public. For instance, the City has opened the Recreation Center to at least one event where social distancing was not observed, has reopened Starr Park, and has reopened Kiwanis Stadium for football games with fans attending in the seats.¹² Members of the public were also invited on September 28, 2020 to tour, in-person, the City's new communications hub.¹³ If the City allows in-person gatherings for some functions, it should allow in-person attendance at City Council meetings where the Mayor and Council members engage in core governance activities, including discussion and voting on issues that impact all City residents. And if in-person attendance at City Council meetings must be limited in number due to social distancing requirements, the in-person spots for attendance must be allocated on a content and viewpoint-neutral basis.

Moreover, to supplement in-person attendance where the number of attendees must be capped -- or if the City determines that in-person attendance is not feasible for any members of the public and this is uniformly enforced rather than being at the Mayor's discretion - the City is required by law to consistently provide effective remote access, as so many other municipalities have successfully done.¹⁴ Given the City's recent expenditures on video production equipment, such as a monitor, video cameras, microphones, and a sound mixer, for public relations broadcasts from the City's new communications hub,¹⁵ the City has no excuse for failing to equip its City Council meeting chambers with the equipment necessary to provide the public with meaningful access to Council meetings.

The City's discriminatory treatment of Ms. Kemp in removing her from public meetings, and its dereliction of its duty to provide public access to open meetings runs afoul of Georgia law and the First Amendment. The City has also failed to comply with other aspects of Georgia's Open Meetings and Open Records Act, including, without limitation, failing to timely post the minutes from City Council and other public meetings held by City committees, and failing to respond in a timely or complete manner to Ms. Kemp's Open Records request.

In resolution of Ms. Kemp's claims, we therefore demand the following:

- Starting with the next regularly scheduled City Council meeting on October 19, 2020, the City of Forest Park will physically open the meeting to the public following reasonable social-distancing and mask/hand hygiene guidelines.

¹² Kemp, *supra* note 1.

¹³ Robin Kemp, "Forest Park opens TV studio for in-house PR effort," Sep. 28, 2020, *Clayton Crescent*, <https://claytoncrescent.org/forest-park-opens-tv-studio-for-in-house-pr-effort/> (last visited Oct. 6, 2020)

¹⁴ Ms. Kemp has attended, without incident and via remote means, live public meetings held by the City of Jonesboro and the Clayton County Board of Commissioners.

¹⁵ Kemp, *supra* note 13.

- If the number of in-person public attendees is limited due to social distancing guidelines, or the City determines that no in-person attendance is feasible (again, so long as uniformly enforced), the City will provide effective visual and audio remote access.
- Effective visual and audio remote access shall include video feed that allows remote viewers to both see and hear clearly each person who speaks during the meeting -- i.e., Councilmembers, the Mayor, City staff, presenters, public commenters -- and to see any slideshows or other exhibits presented during a meeting.
- Effective visual and audio remote access shall also include a trained, professional videographer on site during the meetings to manage and troubleshoot the live feed.
- If the number of in-person public attendees at City Council meetings is limited due to social distancing guidelines, starting with the next regularly scheduled meeting on October 19, 2020: (1) at least two spots for in-person attendance will be reserved for members of the press, and (2) a neutral system will be implemented for determining who else from the public attends in-person (e.g., first come, first served) with this neutral system for seat allocation announced in the OMA-required notice that must be posted in advance of the meeting.
- Starting with the next regularly scheduled City Council meeting on October 19, 2020, each vote by the Council and Mayor will be taken by roll call with the outcome of the vote audibly announced immediately after voting is concluded. This will insure that both those present in person, and those attending remotely, will synchronously know how the Mayor and each Councilmember voted and the final outcome.
- The City will not bar Ms. Kemp or other members of the press from attending public meetings of any body, board, or agency of the City of Forest Park where in-person attendance by members of the public is permitted.
- The City will otherwise comply with all provisions of Georgia's Open Meetings and Open Records Acts.

We appreciate your prompt attention to the matters outlined above and look forward to your reply no later than October 15, 2020.

Sincerely,

Clare R. Norins

Clare R. Norins
Samantha C. Hamilton
Taran Harmon-Walker

Cc. S. Derek Bauer
Robin Kemp