

July 3, 2025

Council of the City of Nanaimo

Andre Memauro

Direct Line:

Email:

Via E-Mail:

Dear Mayor and Councillors of the City of Nanaimo:

RE: Photographing and recording ban at Council Meetings and Municipal Facilities

Charter Advocates Canada ("**CAC**") is a charity and civil society organization. Our purpose is to uphold the constitutional freedoms, civil rights and human rights of Canadians. CAC's team of lawyers are dedicated to defending Canadians' fundamental freedoms, including the freedom of expression of Nanaimo residents.

CAC is concerned with Nanaimo City Council's ("**Council**") recent amendments to Bylaws 7272 (Council Procedure Bylaw) and 7381 (Respectful Spaces Bylaw), to the extent that they now prohibit the public from using electronic devices to take photographs or to video record at Council meetings or at "Municipal Facilities", the latter of which unconscionably extends even to public parks and trails (collectively, the "**Prohibitions**").

The Prohibitions by Council are an egregious violation of the freedom of expression of citizens guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms* ("**Charter**"), whether be it at Council meetings open to the public, or at other public spaces such as parks and trails. Accordingly, CAC invites you to carefully consider this correspondence and immediately reverse such amendments. Citizens have a protected constitutional right to take photographs and record at Council meetings where such conduct is not coupled with disruptive behavior, and they most certainly enjoy such rights in other public spaces such as parks and trails.

Should Council disregard our concerns and fail to reverse these unconstitutional Prohibitions within a reasonable period of time, legal proceedings may follow.

Prohibitions on Photographing and Recording

Council recently adopted the Prohibitions into its Council Procedure and Respectful Spaces Bylaws.

Section 16.5 of the Council Procedure Bylaw deems it “Inappropriate Behaviour” for a member of the public to “take photographs or record video unless expressly authorized by the Chair” (see section 2.1 definition of “Prohibited Use of an Electronic Device”). Consequently, section 16.4 restricts such conduct at Council meetings. Section 16.3 empowers the Chair to expel attendees who take photographs or recordings at a meeting.

Similarly, the Respectful Spaces Bylaw prohibits photographing and recording by members of the public with broad application to various public spaces. Section 3 defines “Inappropriate Behaviour”, in part, as “Prohibited Use of an Electronic Device”, which in turn includes the taking of photographs or video “where unauthorized”. Section 6.2 provides that a person must not engage in “Inappropriate Behaviour” in a “Municipal Facility”, which is defined at section 3 as including, but not limited to, parks and trails. It is uncertain how “authorization” is to be obtained. While this Bylaw requires staff to exercise their power in accordance with the *Charter*, the Bylaw entirely ignores the fact that such a blanket ban on *Charter*-protected activity is wholly inconsistent with the *Charter*. The consequence for not complying with the Respectful Spaces Bylaw includes suspension from all or specified Municipal Facilities for up to 18 months based on a set of prescribed factors.¹ Persons convicted of an offence may also be fined.

The Charter applies and Council has a duty to respect it

As a statutory delegate, the City of Nanaimo is obligated to respect citizens’ *Charter* rights and freedoms.² Bylaws enacted by the City may not unjustifiably contravene the *Charter*, including section 2(b), which guarantees “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication”.

Photography and video recording have both been affirmed by the Supreme Court of Canada as expressive activities that fall within the protective scope of section 2(b).³ A photograph and a video also qualify for protection as “other media of communication.”

Furthermore, section 2(b) applies to expression on government-owned property insofar as the expression is consistent with the underlying purposes of freedom of expression: democratic discourse; truth-seeking; and self-fulfillment.⁴ There are two considerations when determining whether expression is expected to be protected on government-owned property:

- i. The historical or actual function of the place; and
- ii. Whether other aspects of the place suggest that expression within it would undermine the values underlying free expression.⁵

¹ Respectful Spaces Bylaw 2024 NO. 7381, s.7.3 and Appendix B.

² *Charter*, s.32(1)(b); *Godbout v Longueuil (City)*, [1997] 3 SCR 844 at paras 40-41 and 50-51.

³ *Canadian Broadcasting Corp v Canada (Attorney General)*, 2011 SCC 2 at paras 40-46 [CBC].

⁴ *Montreal (City) v 2952-1366 Quebec Inc*, 2005 SCC 62 at para 74 [Montreal].

⁵ *Ibid.*

Prohibition at Council Meetings

Recording a public meeting of Council clearly supports all three purposes underlying *Charter* section 2(b) protection. Furthermore, the historical and actual function of Council chambers, as a physical venue, supports the constitutional protection of photography and video recording.⁶

In short, there is no reasonable justification to enact a blanket ban on the recording of public Council meetings by members of the public, in the absence of other disruptive conduct.

Limitations on recording Parliamentary or provincial legislature proceedings are an entirely separate matter. Such limitations are justified based on parliamentary privilege, a constitutional convention that precludes the application of the *Charter* to legislatures exercising the privilege.⁷ The City of Nanaimo, and its Council, are creatures of provincial statute with no independent constitutional standing. As such, they do not enjoy parliamentary privilege and do not share the legal immunity that federal and provincial legislatures have in banning recording.

Moreover, restrictions on public recordings at Court proceedings are a similarly separate matter, as the justification for such restrictions is to preserve the integrity of witness testimony, which is a non-existent concern at Council meetings.⁸

It is perfectly reasonable for citizens to record and share recordings of Council meetings to keep other members of the public informed about, and engaged in, their local government. Such private recordings are all the more appropriate when official recordings at public meetings are occasionally paused or otherwise incomplete.

The free engagement of residents with their municipal government is a fundamental component of democracy. Any limitation of that engagement must be narrowly tailored and demonstrably justified. The City's blanket ban on photographing and video recording is neither tailored nor justified, and we urge Council to reconsider its decision immediately.

Prohibition at Municipal Facilities

As noted above, the Supreme Court has affirmed that photography and video recording are protected expressive activities under section 2(b) of the *Charter*. The Respectful Spaces Bylaw bans these activities in their entirety at all Municipal Facilities. We note that as written, the Prohibition captures activities as harmless as photographing a bird in a tree at a park, or residents recording a video of their child's soccer game.

It is unclear to CAC what pressing and substantial objective could be served by this egregious restriction. Even assuming that one exists, and that the Prohibition is rationally connected to it, we fail to see how a total ban on photography and video recording is minimally impairing of residents' *Charter* rights, or how the benefits could outweigh the elimination of normal human activity in the City of Nanaimo.

Accordingly, we fail to see how the impugned provisions of the Respectful Spaces Bylaw are a reasonable limitation of residents' freedom of expression that is demonstrably justified in a free and democratic society.

⁶ *Montreal*, at paras 74-78.

⁷ [*New Brunswick Broadcasting Co v Nova Scotia \(Speaker of the House of Assembly\)*, \[1993\] 1 SCR 319.](#)

⁸ *CBC*, 64-69.

Conclusion

The City of Nanaimo, like all municipalities, is bound by the *Charter*. Its bylaws must respect citizens' *Charter* rights. We urge you to immediately reverse the City's unjustified Prohibitions. Failure or delay in doing so may result in legal proceedings.

Yours truly,

CHARTER ADVOCATES CANADA

Per:

A handwritten signature in black ink, consisting of a large, stylized 'S' shape with a horizontal line crossing it near the top.

ANDRE F. MEMAURI