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Via Email

Massachusetts Municipal Lawyers Association
115 North Street
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Attention: James Lampke, Executive Director, jlampke@massmunilaw.org

Massachusetts Association of School Committees
One McKinley Square
Boston, MA 02108
Attention: Executive Director Glen Koocher, gkoocher@masc.org

Re: Home Address Disclosure Policies at Public Meetings

Dear Massachusetts Municipal Lawyers Association, Massachusetts Association of School Committees, and your members:

It has come to our attention that some local government bodies in the Commonwealth, as a matter of policy or practice, require public meeting attendees to announce their home address prior to speaking during public comment. We believe that such policies—to the extent that they require participants to announce their specific address, including their street number—chill the exercise of free speech and free assembly rights guaranteed by the First Amendment to the U.S. Constitution and Articles 16 and 19 of the Massachusetts Declaration of Rights. We urge local government bodies with these policies to adopt other approaches.

We hope to work together to maintain efficient, orderly meetings while also preserving constitutionally protected input by the public. We ask that you kindly share this letter with your memberships.

The Chilling Effect of Specific Home Address Requirements

Home address announcement policies raise serious constitutional concerns under the First Amendment and Articles 16 and 19, which grant people the right to meet and have the “fullest and freest” discussion of public matters. *Barron v. Kolenda*, 491 Mass. 408, 419 (2023) (quoting *Commonwealth v. Porter*, 1 Gray 476, 478, 480 (1854)).

Government bodies are prohibited from unreasonably encroaching upon these rights in public comment sessions. *Id.* at 418.

“[Local government bodies] may impose reasonable restrictions on the time, place, or manner of protected speech and assembly provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.” *Id.* For a time, place, and manner regulation to be narrowly tailored, it must not burden more speech than is necessary to further a legitimate and substantial government interest. *See City of Boston v. Back Bay Cultural Ass’n, Inc.*, 418 Mass. 175, 182 (1994) (citing *Ward v. Rock Against Racism*, 491 U.S. 781, 799-800 (1989)).

A policy that requires meeting attendees to publicly announce their specific home address prior to speaking during public comment is not a reasonable time, place, or manner restriction. Any stated government interest in requiring participants to publicly announce their address is not sufficient to justify chilling speech and privacy invasions. Such policies inhibit attendees from fully and freely expressing their thoughts on public affairs—particularly on hotly contested issues—out of fear of reprisal to their homes, to themselves, and to their families should they express unfavorable or controversial views. These policies may also deter survivors of intimate partner violence and victims of stalking, among others, from speaking during public comment due to significant safety concerns associated with divulging their address. This chilling effect on protected speech is magnified when an attendee’s home address is readily available online through posted meeting recordings and minutes. *See Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2388 (2021) (noting that disclosure requirements chill political speech because the risks of threats and harassment “are heightened in the 21st century and seem to grow with each passing year, as anyone with access to a computer [can] compile a wealth of information about anyone else, including such sensitive details as a person’s home address” (internal quotation omitted)).

Neither do the policies leave open ample alternative channels of communication. There is no adequate alternative to participation at public meetings given their unique, historic, and ongoing function of allowing one to provide input on public affairs and to address both public officials and members of the public, as recognized in *Barron*. *See Barron*, 491 Mass. at 415–18; *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1229 (9th Cir. 1990) (“An alternative is not ample if the speaker is not permitted to reach the ‘intended audience.’”); *Weinberg v. City of Chicago*, 310 F.3d 1029, 1042 (7th Cir. 2002) (holding that no alternative channel existed when ordinance prevented author from reaching intended audience at “[t]he most opportune time and place”).

We find rulings in other jurisdictions, which have explicitly stated that specific home address announcement policies are unreasonable and/or facially unconstitutional, instructive. For instance, the Illinois Attorney General established that, under the Illinois Open Meeting Act, a public body cannot require individuals to disclose their specific home address during public comment since the policy would have a “chilling effect” on individuals who wish to speak at public meetings. *Public Access Opinion 14-009* (2014).¹ The opinion further explained that providing a home address is not reasonably related to the asserted legitimate government interests of keeping accurate meeting minutes, hearing from residents, and responding effectively to concerns raised at public meetings.

Similarly, a federal district court has held that a school district’s home announcement policy was facially invalid under the First Amendment, because “[t]he chilling effect of being forced to announce to all present one’s actual home address before speaking on a hotly-contested issue is clear.” *Marshall v. Amuso*, 571 F. Supp. 3d 412, 426 (E.D. Pa. 2021). The court reasoned that a home address announcement policy is an unreasonable restriction, particularly when, in past meetings, speakers have simply provided their township when signing in and speaking. *Id.* at 426.

While courts in Massachusetts have yet to speak directly on this issue, the Supreme Judicial Court makes clear that unreasonable restrictions on protected speech are unconstitutional. *See Barron*, 491 Mass. at 421. We believe that home address announcement policies—to the extent that they require announcing a specific street and street number—are contrary to the First Amendment and Articles 16 and 19, and we urge local government bodies to consider other approaches.

Local government bodies can further their legitimate interests without requiring attendees to publicly announce their specific home addresses. For example, public bodies can require attendees to announce only their street name or municipality instead of their specific address. *See Miller v. Goggin*, No. CV 22-3329-KSM, 2023 WL 3294832, at *11 (E.D. Pa. May 5, 2023) (holding that policy requiring speakers to announce their municipality—and not their specific address—is not facially invalid under First Amendment).

Conclusion

Public comment sessions are vital forums in which public officials and community members can listen to the concerns of their neighbors, ask questions, gain important feedback from a wide variety of viewpoints, and respond appropriately to issues. Freedom of expression on topics, including hotly contested issues, and the right to

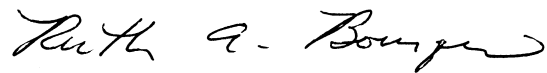
¹ Available at <https://foiapac.ilag.gov/content/pdf/opinions/2014/14-009.pdf>.

privacy should not be abridged by policies that cause attendees to fear threats or retaliation to their homes, to themselves, and to their families.

To comply with the law, enhance democratic institutions and platforms, and respect the free speech rights of your community members, we urge you to change any policy that specifically requires attendees to publicly announce their home address prior to speaking during public comment.

Please do not hesitate to contact the ACLU of Massachusetts if you have any questions about this letter. We can be reached at rbourquin@aclum.org and rdavidson@aclum.org or 617-482-3170 exts. 348 and 320.

Sincerely,



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