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June 21, 2024

VIA E-MAIL

Nicole LaChapelle, Mayor
Homar Gomez, City Council President
Barbara LaBombard, City Clerk
City of Easthampton
50 Payson Avenue
Easthampton, MA 01027
mayor@easthamptonma.gov
hgomez@easthamptonma.gov
blabombard@easthamptonma.gov
publicrecords@easthamptonma.gov

Re: Follow-Up Letter Regarding Easthampton Election Signs Ordinance and Public Records Request Pursuant to M.G.L. c. 66

Dear Mayor LaChapelle, City Council President Gomez, and City Clerk LaBombard:

We¹ are writing with regard to the City of Easthampton (the “City”)’s Sign Code in the City’s Zoning Ordinance (the “Sign Code”) and the City’s enforcement of the Sign Code in a manner that infringes on City residents’ fundamental right of free speech. This letter follows previous correspondence about these issues that ACLUM attorneys Rachel Davidson and Ruth Bourquin sent to you on September 14, 2023 (the “ACLUM’s Letter”).² We have also included below several requests under the Public Records Law, M.G.L. c. 66, § 10.³

We are troubled that the City has neither amended its Sign Code to address the ACLUM’s concerns nor committed to not enforce the Sign Code in a manner that impermissibly

¹ Please note that I am working with attorneys at the ACLU Foundation of Massachusetts, Inc. on behalf of the ACLU of Massachusetts (the “ACLUM”) on this matter. I have copied those attorneys on this letter.

² The ACLUM’s Letter is enclosed as Exhibit A.

³ We ask that you share a copy of this letter with the City Council and the City’s counsel.

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infringes on City residents' fundamental right to express their political views on their own property. The ACLUM's concerns are explained at length in the ACLUM's Letter and are briefly summarized below. We urge the City to give this matter prompt attention given that City residents have a fundamental right to express their political opinions at all times and especially during the current election season.

City Zoning Ordinance § 10.096(b) states:

Election Signs – Election signs shall be displayed for a period of not more than ninety (90) days prior to an election and shall be removed within seven (7) days after the completion of the election. Political signs are allowed at any time of the year, no permit is required.

As explained in the ACLUM's Letter, the first sentence of this ordinance substantially limits City residents' right to engage in speech from their own property with respect to the foundation of a representative form of government—the electoral process. No sufficient government interest exists that would justify forbidding election-related signs except during government-mandated periods before and after an election. The City's Sign Code thus “prohibits too much speech.” *City of Ladue v. Gilleo*, 512 U.S. 43, 55, 58 (1994).

The City's Sign Code also impermissibly engages in discrimination based on the content of residents' speech. City residents are allowed to display “political signs” on their private property year-round without permits. But City residents must abide by the City's strict time limitations regarding the most political speech of all: Who should be in elected office. Laws that target signs based on the content of the message are presumptively unconstitutional and may be justified only if they are narrowly tailored to serve compelling government interests. The City's Sign Code does not pass constitutional muster under this demanding test.

For a more thorough discussion of these issues, I direct you to the ACLUM's Letter and a letter that the ACLUM shared with all Massachusetts towns and cities a few years ago (https://www.aclum.org/sites/default/files/20190423_open_letter_to_towns.pdf.)

Based on the foregoing principles, we urge the City to immediately cease enforcing the first sentence of City Zoning Ordinance § 10.096(b), promptly inform all City residents that the City will no longer be enforcing that provision in the Sign Code, and amend the Sign Code so that election signs are afforded the same treatment as the City currently affords to political signs.

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In light of the issues discussed above, we request the following documents⁴ pursuant to the Public Records Law, M.G.L. c. 66, § 10, for the period from September 14, 2023 to the present:

1. All permit applications for temporary signs under Section 10.096 of the Sign Code;
2. All permits for temporary signs under Section 10.096 of the Sign Code;
3. All internal practices and/or procedures concerning Section 10.096 of the Sign Code;
4. All documents concerning the enforcement of Section 10.096 of the Sign Code;
5. All notices of violation issued to City residents concerning Section 10.096 of the Sign Code;
6. All documents concerning the removal of signs by the City pursuant to Section 10.096 of the Sign Code;
7. All communications with City residents concerning Section 10.096 of the Sign Code;
8. All internal communications concerning Section 10.096 of the Sign Code;
9. All communications involving the Zoning Enforcement Officer concerning Section 10.096 of the Sign Code;
10. All communications involving the Mayor concerning Section 10.096 of the Sign Code;
11. All communications involving any member(s) of the City Council concerning Section 10.096 of the Sign Code;
12. All communications concerning political and/or election signs;
13. All documents and communications concerning the ACLUM's September 14, 2023 Letter; and

⁴ The term documents includes documents that exist in any format including but not limited to hard copy documents and documents in electronic format such as emails.

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14. All documents that reflect any steps the City has taken to address the issues raised in the ACLUM's September 14, 2023 Letter.

Because this request involves a matter of public concern and is made on behalf of a nonprofit organization, we kindly ask that you waive any fees. Please provide documents in electronic format where possible. If you determine that some portions of the documents requested are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note the applicable statutory exemption and explain why it applies to any redacted information. As you know, a custodian of public records shall comply with a Public Records Law request within 10 business days of receipt of the request.

We would also like to start a dialogue with the City as soon as possible to discuss our concerns and find a solution without the need for litigation. To that end, please let us know your availability and/or the City's counsel's availability for a call or Zoom meeting to discuss these issues within the next two weeks. We look forward to hearing from you soon.

Sincerely,



Keith H. Bensten

Enclosure

cc: Ruth A. Bourquin (*via email*: rbourquin@aclum.org)
Rachel E. Davidson (*via email*: rdavidson@aclum.org)
Will Black (*via email*: wblack@daypitney.com)

Exhibit A



Rachel E. Davidson
Free Expression Staff Attorney
(617) 482-3170 ext. 320
rdavidson@aclum.org

September 14, 2023

Via Email

Nicole LaChapelle, Mayor
Homar Gomez, City Council President
Barbara LaBombard, City Clerk
City of Easthampton
50 Payson Avenue
Easthampton, MA 01027
mayor@easthamptonma.gov
hgomez@easthamptonma.gov
blabombard@easthamptonma.gov

Re: Easthampton Election Signs Ordinance

Dear Mayor LaChapelle, City Council President Gomez, and City Clerk LaBombard:

We write to bring to your attention serious concerns about the constitutionality of the provision of Easthampton's zoning ordinance that imposes time limits on election signs on private property. This aspect of the ordinance is a violation of core free speech principles, which protect residents' rights to express their political views on their own property any time of year.

Zoning Ordinance § 10.096(b) provides:

Election signs shall be displayed for a period of not more than ninety (90) days prior to an election and shall be removed within seven (7) days after the completion of the election. Political signs are allowed at any time of the year, no permit is required.

The second sentence of this ordinance correctly reflects that residents have a right to express their political views year round. But the first sentence greatly restricts that right with regard to political signs related to elections. This sentence substantially limits residents' rights to speak from their own property with regard to the very foundation of a representative form of government—the electoral process.

As you may be aware, Holyoke residents represented by our office successfully challenged the constitutionality of similar time limits on political signs in Holyoke several years ago. Information about that lawsuit is available on our website:

<https://www.aclum.org/en/cases/molloy-et-al-v-city-holyoke>. The Court's ruling that Holyoke's restrictions on political signs on private property violated free speech was grounded in well-settled law that restrictions on political signs on private property implicate core democratic values, the sanctity of the home, and are unconstitutional absent very strong government interests, such as legitimate public safety concerns.

There is no sufficient government interest that justifies forbidding election-related signs except during government-mandated times before or after an election. Residents have a right to put up signs earlier as a means of expressing their strong and early support for a candidate or on a ballot issue. They also have a right to leave such signs up after the election is over to express their sentiments, for instance, that the correct person or side of an issue won, to protest the results of the election, or that their preferred candidate or position should be supported in the next election—no matter far off that may be. An ordinance such as the Easthampton one simply “prohibits too much speech.” *City of Ladue v. Gilleo*, 512 U.S. 43, 55, 58 (1994).

The problem with the Easthampton ordinance is compounded because it engages in discrimination based on the content of a resident's speech. A resident is allowed to have a sign in their yard year-round that expresses views such as “Blue Lives Matter,” “Climate Change is a Hoax,” “Climate Change is Real,” “Impeach Trump,” “Impeach Biden,” etc. But they are constrained by strict time limits with regard to the most political speech of all: who should be in elected office and what should the laws of the Commonwealth or the City be.

Any ordinance that targets signs based on the type of message that they express is a content-based law subject to strict constitutional scrutiny. Such ordinances are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling government interests. The government cannot meet its burden by asserting interests in aesthetics or even public safety, especially where it allows signage containing other types of content without such durational limitations.

These principles are explained in more detail in a letter we shared with all Massachusetts cities and towns a few years ago. It provides an overview of the law and information about other cities and towns who have recognized that their previous ordinances or bylaws similar to Easthampton's are unconstitutional. That letter is available at https://www.aclum.org/sites/default/files/20190423_open_letter_to_towns.pdf.

We urge Easthampton to immediately cease enforcement of the first sentence of section 10.096(b), promptly and through effective means inform residents that the provision will not be enforced so that their free speech rights are not unlawfully chilled by the existence of the ordinance, and repeal that provision at the earliest opportunity in order to treat election-related signs equally to all other political signs.

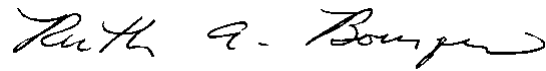
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Election Signs Ordinance
September 14, 2023

If you or counsel for the City have any questions about this letter and the free speech principles on which it is based, we would be happy to discuss. We can be reached at the email and phone number listed above.

Sincerely,

A handwritten signature in black ink that reads "Rachel Davidson". The signature is fluid and cursive, with a large initial "R" and "D".

Rachel E. Davidson

A handwritten signature in black ink that reads "Ruth A. Bourquin". The signature is fluid and cursive, with a large initial "R" and "B".

Ruth A. Bourquin
Senior & Managing Attorney