

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT  
CIVIL ACTION NO.  
18-\_\_\_\_\_

MASSACHUSETTS PEACE ACTION and  
MASSACHUSETTS PEACE ACTION EDUCATION FUND,  
Plaintiffs,

v.

CITY OF CAMBRIDGE, MASSACHUSETTS and  
LOUIS DEPASQUALE, in his capacity as  
City Manager of the City of Cambridge,

Defendants.

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**Introduction**

1. This is an action challenging the legality of a vague sub-regulatory policy of the City of Cambridge (“City”) that purports to authorize certain executive-branch officials to charge organizers for police, fire and other public safety services as a condition of granting a Special Events Permit for politically expressive events in the City’s parks.

2. Under the First Amendment to the United States Constitution and Article 16 of the Declaration of Rights, policies that purport to authorize assessment of costs for public safety services are content-based and facially invalid. Further, the City’s vague policy leaves to the unfettered discretion of administrative officials the decisions of whether and when service charges will be imposed, what services will or

may be encompassed by such charges, whether any such charges will be imposed to provide basic public safety services or to control the conduct of counter-demonstrators, and whether, when and to what extent some of the costs of providing the services will not be charged. For this reason too, the City's policy violates the First Amendment to the U.S. Constitution and Articles 16 and 19 of the Declaration of Rights of the Massachusetts Constitution. The City's policy also violates these provisions of the federal and state constitutions because they leave no ample alternatives for large gatherings of people to share their views on matters of public concern within the City.

3. Because the types of services for which plaintiffs here are being charged were provided largely for the benefit of the society as a whole and not primarily for the benefit of the plaintiffs, charges for such services also constitute an unconstitutional "tax," rather than a "fee," which the City has impermissibly imposed without express legislative authorization.

4. Plaintiffs also allege that the City's policy violates principles of equal protection and due process under both the state and federal constitutions.

### **The Parties**

5. Plaintiff Massachusetts Peace Action ("MAPA") is a non-profit entity incorporated under 26 U.S.C. § 501(c)(4). It was one of the agencies organizing the so-called "Women's March" held on Cambridge Common on January 20, 2018. MAPA was designated as the fiscal agent for the permits requested for the event. MAPA's headquarters are at 11 Garden Street, Cambridge, MA 02138.

6. Plaintiff MAPA Education Fund (“MAPA EF”) is a non-profit entity incorporated under 26 U.S.C. § 501(c)(3). Because of this status, it is the actual fiscal agent for MAPA and therefore the organization that would actually have to pay the outstanding bills for the Women’s March. MAPA EF’s headquarters are also at 11 Garden Street, Cambridge, MA 02138.

7. The City of Cambridge is a city within the Commonwealth of Massachusetts. The City has a Plan E form of government pursuant to G.L. c. 43, § 93.

8. The executive branch of the City is headed by the City Manager Louis de Pasquale, who is named solely in his official capacity.

9. Cambridge City Hall is located at 795 Massachusetts Avenue, Cambridge, MA 02139.

### **Jurisdiction**

10. The Court has jurisdiction over this matter pursuant to G.L. c. 231A, § 1; G.L. c. 214, § 1; and 42 U.S.C. § 1983.

### **Factual Background**

11. Organizations concerned about women’s rights and other progressive issues planned expressive events around the country for January 20, 2018, referred to collectively as a Women’s March.

12. Plaintiffs and other organizations began planning the eastern Massachusetts version of the Women’s March in or about the fall of 2017. They began and completed the process of seeking necessary permits between November

2017 and January 2018. They paid the permit application fees as requested and do not challenge those fees in this action.

13. Although designated the Women's March, the planned event in Cambridge was not a march through City streets but a stationary event on the Cambridge Common, a quintessential public forum for assembly of the people.

14. Approximately 11 days before the event, the organizers were informed orally by members of the Cambridge Police Department ("CPD") that they might be charged for the provision of public safety services at the event, including for police protection and the presence of Emergency Medical Technicians ("EMTs") from the City. The discussion of charging for these basic public protection services occurred just after the organizers told police that there was some risk of counter-protesters on the day of the event and after police officials said they were worried the event could turn into another "Charlottesville"—referring to the violent "Unite the Right" event in August 2017 in Charlottesville, Virginia.

15. Plaintiffs never agreed to make such payments.

16. At the time, Plaintiffs did not have the funds to make any such payments.

17. After hearing police officials say organizers may have to pay the cost of police protection, at least one group who was helping organize the event dropped out of the planning because of its opposition to funding police services.

18. A few days before the Women's March, the CPD gave MAPA a rough estimate of anticipated charges for police details. MAPA did not agree to pay such charges.

19. The Cambridge Women's March went forward on January 20, 2018. It was peaceful and well-attended, and occurred wholly on the Cambridge Common. Speakers addressed the crowd and members of the crowd carried signs expressing political views.

20. On the day of the March, CPD asked MAPA to sign a document agreeing to pay bills for public safety charges, which MAPA declined to do.

21. Approximately two days after the March, organizers were in fact given "bills" for police details and EMT services and told that more, including from other cities or towns that filled some of the designated police details, would be forthcoming. Plaintiffs did not agree to pay these bills. Around this same time, representatives of the CPD began demanding payment of the bills for public safety services. Although invoices for all of them have not yet been received, City officials told Plaintiffs that the total amount they were being charged was \$4,028.75, comprising \$1,194.50 for the CPD; \$385 each, or a total of \$1,155, for police officers from Melrose, Everett and Chelsea; \$1,240.25 for MBTA police services; and \$440 for the Cambridge Fire Department for EMT services.

22. The services that were provided by the police departments of Melrose, Everett, Chelsea and the MBTA, upon information and belief, were provided at the request of the City. Plaintiffs did not request any of their services.

23. Particularly concerned about the precedent that would be set for others with even less capacity to raise funds for such public safety expenses, organizers contacted the American Civil Liberties Union of Massachusetts (“ACLUM”).

24. On January 24, 2018, ACLUM, on behalf of MAPA, sent a public records request to the City, seeking

(1) any and all public records containing or revealing any City of Cambridge ordinances, by-laws, rules, regulations, policies or guidelines authorizing the police department, the fire department or any other governmental department or agency to charge for police or EMT coverage/services or any other government services for events or special events for which a park permit and/or special event permit has been issued; and (2) any and all public records containing or revealing any criteria or standards that are used and/or are required to be used by City personnel in determining the amounts that may be charged under any such ordinances, by-laws, rules, regulations, policies or guidelines.

25. On January 31, 2018, ACLUM, on behalf of MAPA, wrote to City officials expressing concerns that the assessment of public safety charges was in violation of the free speech and assembly protections of the federal and state constitutions. See Exhibit A. These concerns focused particularly on the lack of clear policies to guide the discretion of City officials in deciding what costs would and would not be charged, contrary to the rationale of *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992).

26. On February 21, 2018, ACLUM, on behalf of MAPA, sent City officials copies of the actual bills that had already been served on MAPA and a chart showing other charges that MAPA had been told were being assessed. Copies of the bills and charges were sent because City officials had told at least one other official

that they did not know to what charges ACLUM was referring in its correspondence.

27. On March 1, 2018, the City's public records officer—after extending the City's time to respond to the public records request from 10 to 25 business days because of the so-called complexity of the request—delivered to ACLUM only three documents:

- (1) A "Park and Public Usage Policy" containing the statement: "Person(s) or Organization(s) permitted to use facilities . . . shall be responsible for the behavior of person(s) attending and shall furnish if necessary, at their own expense fire, police detail or other protection as the City of Cambridge may direct." Exhibit B (emphases added);
- (2) "Guidelines for Special Events in the City of Cambridge," containing the statement: "An estimate of costs for City support services *if applicable* will be discussed and noted under the 'Department Approval' portion of the Special Events Application Form during your attendance at the Special Events Committee Meeting." Exhibit C (emphasis added); and
- (3) A "Parks and Public Areas" document containing the statement: "A public gathering of 200 or more people *may require* a Police Detail and/or DPW personnel in attendance at the expense of the applicant." Exhibit D (emphasis added).

28. MAPA never received any written estimate of costs on the 'Department Approval' portion of the Special Events Application Form as described in Exhibit C.

29. On March 2, 2018, the City Solicitor emailed ACLUM, responding that the City believes it has a right to impose these charges; pointing out that the amounts for which Plaintiffs were being charged were net of portions of the total costs of public safety services on January 20, 2018 that the City already had "waived"; and indicating that somehow the amounts being charged had declined to \$2,788.50. The response gave no rationale for which amounts were charged and which were "Waived/Not Charged." It cited no ordinance or other actual law authorizing the charging of such costs or guiding the discretion of City officials as to how much to charge for what and when. In an attempt to show that the City has some definite and uniform (if unwritten) policy, the response referred to "fees for parking meters which are charged by the Department of Traffic, Parking and Transportation to all users." Belying this consistency, however, the letter went on to say that any costs for parking meters on January 20, 2018 were "waived/not charged." Exhibit E.

30. In spite of the lack of any reference to any charges for MBTA police services in the City Solicitor's email, MAPA has now received bills directly from the MBTA police for \$852.50 for services performed on January 20, 2018, plus a 10% administrative surcharge, apparently for simply sending out the bills. See Exhibits F1 and F2.



31. On March 22, 2018, ACLUM, on behalf of MAPA, wrote again to City officials to offer to meet on or before April 13, 2018 to resolve the dispute and to lay out with greater specificity the grounds on which the City's indefinite policies with regard to charges for public safety services are inconsistent with constitutional requirements. Exhibit G.

32. After receiving no response to the request to meet by April 13, MAPA and other individuals involved in organizing the Women's March began meeting with Cambridge City Councilors to inform them of the pending conflict and seek their intervention.

33. After one of those meetings, one of the City Councilors emailed one of the March organizers and said that the City Manager had authorized her to inform MAPA that, after further consideration, the amounts being charged directly by the City would now be "waived," but that MAPA would still be liable to the Everett, Melrose, Chelsea and MBTA police departments, because the City supposedly had no power to "waive" those charges.

34. Bills from these entities now received by MAPA total \$1,622, including \$852.50 from the MBTA Transit police with two separate invoices (see Exhibits F1 and F2); \$385 from the Everett police (see Exhibit H), and \$385 from the Melrose police department (Exhibit I). MAPA has not received any bill from the Chelsea police department. Plaintiffs do not know if the MBTA plans to send additional bills increasing the total being claimed to the amount discussed with the organizers and referenced in paragraph 21 above.

35. Despite the hearsay promise that the City would waive its direct charges, the City declined to put that commitment in writing and made no promise that the City would adopt a different policy going forward or that it would not continue to apply the same policy of charging for public safety services to MAPA and others in the future. Nor did the City provide any explanation for the decision to “waive” the bills from City departments.

36. The City Manager and City Solicitor ultimately agreed to meet with representatives of the Plaintiffs, including their counsel, on Thursday, June 14, 2018. At that meeting, the City officials said that they were reviewing the City policies for potential revision, that such review could take at least two months, and that the City would not suspend its current policy of authorizing charges for public safety services pending that review. They also said that, in spite of what a City Councilor had conveyed, the City had *not* officially agreed to waive the City’s own portion of the charges, although they said that Plaintiffs need not pay them for now. The officials also said that they thought the some or all of the third party entities who had sent bills to Plaintiffs had also sent bills to the City and that the City may have already paid those bills, although, to date, no confirmation has been received by Plaintiffs.

### **Legal Background**

37. The Cambridge Common is a quintessential traditional public forum. *See, e.g., Frisby v. Shultz*, 487 U.S. 474, 480 (1988); *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983); *Glik v. Cuniffe*, 655 F.3d 78, 84 (1st Cir.

2011). In such a forum, the rights of government to limit the exercise of free speech and freedom of assembly are sharply circumscribed.

38. Imposition of costs for public protection as a condition of obtaining a permit to access a traditional public forum comes with a heavy presumption against its constitutionality as a prior restraint on speech.

39. Even in such public fora, government can impose reasonable time, place and manner restrictions. But such restrictions may not delegate overly broad licensing discretion to a government official since such delegation allows for content-based and viewpoint-based application, which is inherently inconsistent with a valid time, place, and manner restriction. *Forsyth County*, 505 U.S. at 130 (quoting *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 649 (1981)). In addition, any time, place and manner restrictions must not in fact be based on the content of the message, must be narrowly tailored to serve a significant governmental interest, and must leave open ample alternatives for communication. *Id.* at 130; see also *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984).

40. In *Forsyth County*, the Court made clear that charges for public safety services are not allowed because they inevitably risk of taking into account the reaction of listeners or counter-protesters and cannot be justified by the City's desire to offset costs for public safety. 505 U.S. at 134–135. The Court also made clear that, even with regard to non-public safety charges, in order to meet the high standards for constitutionality, City policies purporting to authorize the assessment

of certain costs for the use of public parks for expressive activity must contain narrow, objective, and definite standards to guide the licensing authority. *Id.* at 131 (quoting *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150–151 (1969)).

41. The City policy at issue here, which is not in an enacted ordinance, appears only on various website pages and contains no definite standards. The policy impermissibly delegates unfettered discretion to City officials to determine if or when charges for public safety costs will be deemed “necessary,” “applicable” or “require[d].” It thus is unconstitutional.

42. The policy is also unconstitutional because it does not allow for “ample alternatives” for assembly and speech of the type at issue in the Women’s March. All public parks in Cambridge are subject to the same policies.

43. Further, because the City is assessing costs for public safety services – which benefit not the organizers exclusively but the community as a whole – they are “taxes” and not “fees” and are unlawful because they are not authorized by the Legislature.

44. The City’s initial response to a public records request concerning how the purported authority to charge for public safety services has actually been applied during the past 5 years shows that the City sometimes does not charge for public safety services for events that are “sponsored” by the City and sometimes apparently does not charge for public safety services for events labeled “Community Events.” No discernable, let alone definite, criteria appear to exist for determining

which events will be “City sponsored” or for which “Community Events” charges will be assessed.

45. The City has no procedure by which to appeal an assessment of charges as a condition of obtaining a Special Event permit.

46. Plaintiffs are reluctant to plan future events because of their experience with the past application of the City’s policy to them. As a result, their activities and voices are being chilled. In addition, they experience uncertainty as to whether they are legally liable to pay the public safety charges for the 2018 Women’s March. Such uncertainty impinges on their ability to plan ahead for other social justice activities.

### **Causes of Action**

47. The foregoing allegations are hereby incorporated into each of the counts below.

#### **Count 1 – Free Speech and Assembly First Amendment to the U.S. Constitution & 42 U.S.C. § 1983**

48. The City’s policy that purports to allow the City to charge for basic public safety services for expressive events and assemblies in the parks of the City, on its face and as applied, is inconsistent with the First Amendment to the United States Constitution.

#### **Count 2 – Free Speech and Assembly Articles 16 and 19 of the Mass. Declaration of Rights & G.L. c. 231A and c. 214, § 1**

49. Protections for free speech and assembly under the Massachusetts Constitution are broader than concomitant protections under the First Amendment.

50. The City policy at issue violates these state constitutional provisions for the same reasons that it violates the First Amendment, and in addition it violates Articles 16 and 19 because charging organizers for public safety protection unduly penalizes those engaging in expressive activity in a traditional public forum.

**Count 3 – Taxation without Authorization**  
**Article 10 of the Declaration of Rights, Amendment Article 2 of the**  
**Massachusetts Constitution, and G.L. c. 231A and c. 214, § 1**

51. Article 10 of the Declaration of Rights provides that “[e]ach individual of the society has a right to be protected by it in the enjoyment of life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection ... but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent or that of the representative body of the people.” Further, Amendment Article 2 provides that cities and towns do not have the power to “levy, assess and collect taxes” except as specifically authorized by the Legislature.

52. The imposition of charges for the public safety services at issue here violate both provisions.

53. Through G.L. c. 40, § 22F, the Legislature authorized municipal officers charged with issuing permits to charge “reasonable fees” for such permits and “reasonable charges” for services rendered or work performed by city officials in relation to the permit. This statute does not allow for the imposition of “taxes” for use of public parks and must be interpreted in accordance with the constitutional protections for free speech and assembly in both the state and federal constitutions.

Because the statute does not contain definite criteria for the exercise of this supposed power with regard to expressive activity in traditional public fora, its application to such activities would be unconstitutional. Alternatively, the only way it can be construed in a constitutional manner is for it to be interpreted to apply to charges for services that uniquely benefit the permittee – and not charges for public safety services to protect those exercising constitutionally protected speech and assembly rights, those coming out to listen to those exercising such rights, those merely passing by, or those attending to show their opposition to the organizers' views.

**Count 4 – Equal Protection**  
**14<sup>th</sup> Amendment to the United States Constitution,**  
**Amendment Article 106 to the Massachusetts Constitution,**  
**42 U.S.C. § 1983, G.L. c. 231A, and G.L. c. 214, § 1**

54. By charging some but not other similarly situated persons or events for public safety services, the City is violating Plaintiffs' rights to equal protection of the laws.

**Count 5 – Due Process**  
**14<sup>th</sup> Amendment to the United States Constitution,**  
**Articles 1, 10 and 12 of the Massachusetts Declaration of Rights,**  
**42 U.S.C. § 1983, G.L. c. 231A, and G.L. c. 214, § 1**

55. By failing to have definite standards for determining what charges will be assessed and by failing to have a process for appealing assessed charges, the City is violating Plaintiffs' rights to due process.

**Prayers for Relief**

Wherefore, Plaintiffs respectfully request that this Honorable Court:

1. Issue a short order of notice and a preliminary injunction directing the Defendants to: (i) take all reasonable steps to relieve Plaintiffs from any duty to pay the outstanding bills for the January 20, 2018 Women's March while this action is pending, (ii) cease charging for public safety services in City parks or other public forums pending further order of the Court, and (iii) cease holding out to the public that the City might charge organizers for public safety services for Special Events in City parks pending further order of the Court;
2. Declare that (i) the imposition of public safety service fees for the January 20, 2018 Women's March and (ii) the City's policy purporting to authorize it to charge for the cost of public safety services as a condition for a permit to assemble and speak in City parks is unconstitutional;
3. Permanently enjoin the City to: (i) take all reasonable steps to relieve Plaintiffs from any duty to pay the outstanding bills for the January 20, 2018 Women's March, (ii) cease charging for public safety services in City parks or other public forums, and (iii) cease holding out to the public that the City might charge organizers for public safety services for Special Events in City parks;
4. Award plaintiffs' counsel reasonable attorneys' fees and costs; and
5. Award such other and further relief as the Court deems just and proper.



On behalf of plaintiffs,

MASSACHUSETTS PEACE ACTION and  
MASSACHUSETTS PEACE ACTION EDUCATION FUND



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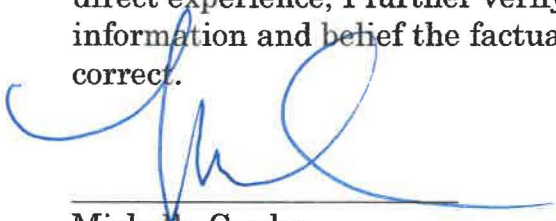
Dated: July 2, 2018



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### Verification of Complaint

I, Michelle Cunha, state under the pains and penalties of perjury, that I am the Assistant Director for Massachusetts Peace Action. I was directly involved in organizing and obtaining permits for the Cambridge Women's March. Based on my direct experience, I further verify that to the very best of my knowledge, information and belief the factual allegations in this Complaint are true and correct.

  
\_\_\_\_\_  
Michelle Cunha

Dated: 7/2, 2018