

EXHIBIT A



Ruth A. Bourquin
Senior Attorney
(617) 482-3170 ext. 348
rbourquin@aclum.org

January 31, 2018

Via Email and First Class Mail

Marc C. McGovern, Mayor
Louis D. DePasquale, City Manager
Nancy E. Glowa, City Solicitor
City of Cambridge Massachusetts
795 Massachusetts Avenue
Cambridge, MA 02139
mayor@cambridgema.gov
citymanager@cambridgema.gov
nglowa@cambridgema.gov

Re: Fees for Government Services as a Condition of Special Permits

Dear Mayor McGovern, City Manager DePasquale, and Solicitor Glowa:

I am writing on behalf of the New England Independence Campaign (NEIC) and Massachusetts Peace Action (MAPA), organizers of the Women's March on the Cambridge Common on Saturday, January 20, 2018. It is my understanding that the City is demanding that these unincorporated (in the case of NEIC) and nonprofit (in the case of MAPA) grassroots organizations use their limited resources to pay thousands of dollars for certain police, EMT and other details for the Women's March.

I am writing now to ask that City officials cease these demands for payments, at least until I receive a response to a pending public records request and there is an opportunity to discuss the legality—and wisdom—of these financial charges.

My understanding is that Massachusetts Peace Action was informed orally of the City's intent to charge fees on January 11, 2018, but was notified for the first time of actual estimates of the charges for police, EMT and transit police coverage on or about January 18, 2018, only two days before the scheduled March. The estimated charges were described orally and written by hand on a piece of paper by a march organizer.

That same day, the MAPA and other groups participating in the Women's March contacted the ACLU of Massachusetts, expressing concern that these charges were beyond their ability to pay and threatened their free speech and association rights. I then placed calls to the City Solicitor's office, the Clerk's office and the Police Department seeking direction to any City law or policy in place authorizing such charges and setting parameters for how any authorized charges are to be determined. No one in these offices could direct me to any such law or policy.

Accordingly, on January 24, I sent the enclosed public records request seeking the purported authority for these demands, in light of the serious free speech and assembly issues these charges raise. The public records officer promptly replied that the request was received and is being processed.

We believe that the City's policies, facially and as applied, likely violate both the federal and state constitutions. As you are no doubt aware, the Cambridge Common is a traditional forum for expression in which protection for the exercise of these rights is very high. *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983). As a result, under the First Amendment to the U.S. Constitution, permit schemes "may not delegate overly broad licensing discretion to a government official," and, in addition, application of such schemes must not be based on the content of the message, the views to be expressed, or the likelihood of counter-protestors being present. *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130-36 (1992).

The Massachusetts Constitution has been interpreted to provide even greater protection to certain forms of political expression than the First Amendment. *See, e.g., Commonwealth v. Lucas*, 472 Mass. 387, 397 (2015) (applying strict scrutiny under state constitution to restrictions on political speech even though U.S. Constitution may require only intermediate scrutiny); *Batchelder v. Allied Stores Int'l, Inc.*, 388 Mass. 83 (1983) (holding Article 9 of the Declaration of Rights affords greater protections for signature gathering than the First Amendment). As a result, we think the City's imposition of such fees, regardless of the scope of the delegation, may well violate our state Constitution. The City's actions raise serious questions under, *e.g.*, Article 16 of the Declaration of Rights, which as amended categorically states that "The right of free speech shall not be abridged," and Article 19 of the Declaration of Rights which provides that the "people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good"

Of course, in addition to the issue of the legality of the proposed charges, there is the separate issue of whether the City of Cambridge—often a beacon of rights and liberties—wants to enforce policies that deter free expression. Particularly in these times, when the federal government is fomenting division and

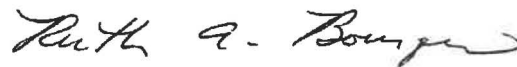
Mayor McGovern, Manager DePasquale and Solicitor Glowa
January 31, 2018
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seeking to deter free speech, the voices of brave women such as the organizers and participants of the Women's March are needed now more than ever. Their leadership should be applauded, rather than taxed. We therefore ask the City to reconsider its policy.¹

If you could confirm to me by email or phone whether the City will honor the request to put efforts to collect these bills on hold, we would be grateful.

Thank you for your attention to this important matter.

Sincerely,



Ruth A. Bourquin

cc: Michelle Cunha, MAPA (via email)
Annie Thorburn, NEIC (via email)

Encl.

¹ We note that the District of Columbia has enacted an ordinance that prohibits the imposition of such fees in the interest of robust public, political engagement. See Code of the District of Columbia, § 5-3105(e) ("The Mayor shall not enforce any user fees on persons or groups that organize or conduct First Amendment assemblies"), available at <https://code.dccouncil.us/dc/council/code/sections/5-331.05.html>.

EXHIBIT B

Park & Public Area Usage Policy

- Proof of residency will be provided to the satisfaction of the City of Cambridge.
- Payment of (\$25.00) must be made at time of application, before permit is issued. Payment can be made via phone with credit card, via check sent in with the permit application, or in person with cash, check or credit card.
- Residency requirement that at least 50% of the participants must be residents of Cambridge.
- Cambridge based companies sponsoring requests for permits, must certify that all participants are employed by and on the payroll of the company/industry.
- Fields and/or parks cannot be reserved by telephone.
- Sunday restriction, Cambridge Common athletic field can be reserved after 12pm.
- Permits are not transferable.
- Approved permits shall be used for designated areas only.
- All vehicles should be in assigned parking areas only.
- Events must remain open to the general public.
- Some events may require approval of other City agencies.
- Use of tents, canopies, and/or amplification of music will require special permission. Permitted tents can be secured with sandbags or concrete blocks only, use of stakes is prohibited.

The following is prohibited in parks, fields, and open areas:

Use of alcohol, drugs, firearms, fireworks, explosives, littering, animals, making fires (cooking) undue noise, public nuisances, disturbing the peace, soliciting, loitering, and destruction of property.

Cambridge School Department and other City agency activities must be allowed to finish their activities before permittee may use the park/play field. The City of Cambridge reserves the right to revoke permits or change schedules. If permits cannot be used because of inclement weather, a credit will be given for future use.

Person(s) or Organization(s) permitted to use facilities shall protect the property from abuse and shall be responsible for any damage that occurred in connection with or in consequence with such use. Such person(s) and/or organizations(s) 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.

<http://www.cambridgema.gov/theworks/ourservices/specialevents/parkandpublicareapolicy>

EXHIBIT C

GUIDELINES FOR SPECIAL EVENTS IN THE CITY OF CAMBRIDGE

SPECIAL EVENTS

Tel. 617-349-4846 Fax. 617-349-4868

These guidelines have been developed for any person or group that wants to conduct a public event in the City of Cambridge.

A "Special Event" is an event open to the general public; it can be held on public or private property; it may feature entertainment, amusements, food & beverages; it may be classified as a festival, road race, parade, or walkathon.

A public event in the City of Cambridge depending on the size and nature of the event may require a number of permits from various departments within the City before it is officially approved.

In order to assure that the City as well as the public event applicant has as much information as needed before beginning the permitting process, the City requires the applicant to sit down with the Special Events Committee prior to the scheduling of their event. The applicant must provide a completed Special Events Application Form **before** your scheduled meeting:

Special Event Application Forms are available at the Public Works Department, Traffic Parking & Transportation Department, License Commission, & on the City's website at:

http://www.cambridgema.gov/CityOfCambridge_Content/documents/forms/specialeventPermit.pdf

- Please include a detailed site plan or map of the area showing all location for the following: all Americans with Disabilities Act (ADA) accessibility, pedestrian & fire access; dimensions of stages & tents; & type of equipment or generators & the placement of any vendors and any portable toilet facilities. (Site plan/map must be large enough to be legible.)
- If the site of the event is privately owned, a letter from the landlord giving the applicant the right to use the property is required.
- If the event is featuring entertainment, you need to list all performances.
- If the event is featuring amusements, you need to list all rides & games.
- If this is a "first year" of your event, please attach any letters of support from local community and business organizations.

Once you have completed the Special Events Application Form, please forward this information by Fax or E-mail to the Special Events Committee Coordinator, Annette Rodibaugh at (617)349-4868 (Fax), or arodibaugh@cambridgema.gov.

She will add you to the meeting agenda and contact you with the meeting date & time. (The committee meets monthly at the Public Works Department at, 147 Hampshire Street, Cambridge, MA). For specific questions or concerns, Annette Rodibaugh can also be reached by telephone at (617) 349-4846.

- 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.
- After your meeting you must apply for the permit(s) that are required for your particular Special Event. The Committee will supply you with this information during your meeting.

EXHIBIT D

Parks and Public Areas

11/5/2015

<http://www.cambridgema.gov/theworks/permitsanddocuments/Permits/Permits/P/copyofparksandpublicareas.aspx>

PLEASE NOTE: Due to the high volume of activity in parks throughout the City, we ask that you help us keep it clean for all to enjoy by carrying in trash bags and carry out your waste.

A Park Permit is required for any non-athletic events in City parks or public areas and must be obtained through The Department Public Works. Please read the Parks Permit FAQ page before applying for the permit. With the exception of Danehy Park and North Point Park, all parks require a permit.

Important Things to Know

1. 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.
2. Applications must be submitted two weeks prior to the requested date of event to ensure availability of the park/public area being requested.
3. Requests to use **Danehy Park** for any activity must be done through the City's Department of Human Services. Please contact Tom Cusick from the City's Recreation Division at 617.349.6238 or via email at tcusick@cambridgema.gov **North Point Park** is the property under the jurisdiction of the state of Massachusetts. To inquire about the use of North Point Park, please contact the Massachusetts Department of Conservation and Recreation at 617.626.1250.
4. Applicants can now apply online to purchase a permit from The Department Public Works. Methods of Payment include: Visa, MasterCard or Discover credit cards, Visa & MasterCard debit cards, or Electronic checks (E-checks). A **convenience fee** will be charged for each purchase. 2.5% for Visa, MasterCard or Discover and a \$2.00 flat fee for payments made with Electronic checks. Learn more about convenience fees. You will be taken to a secure, third-party payment processor, Velocity Payment Systems to submit payment online.
5. If you have any questions, please contact Cathy Fosher at 617.349.4885 or via email at cfosher@cambridgema.gov

Please use link below to apply for permit.

City of Cambridge On-Line Permit Program

EXHIBIT E

Ruth Bourquin

From: Glowa, Nancy <nglowa@cambridgema.gov>
Sent: Friday, March 2, 2018 4:42 PM
To: Ruth Bourquin
Cc: McGovern, Marc; DePasquale, Louie
Subject: Women's March Fees

Attorney Bourquin,

I am writing in response to your below email inquiring about fees charged by the City of Cambridge in connection with the Women's March that was held on the Cambridge Common on Saturday, January 20, 2018, as well as your letter of January 31, 2018 addressed to Mayor Marc C. McGovern, City Manager Louis A. DePasquale and me about this matter. The City has already produced to you its policies and literature on fees charged for special events such as yours in response to your public records request, so I will not produce those documents again here. You have also stated that you are aware of the Cambridge Police Department's general schedule of "detail rates" so I will not produce that document again here, either.

We do not agree with your argument that the City's policies, facially and as applied, likely violate both the federal and state constitutions. You undoubtedly know that reasonable regulations may be imposed with regard to use of City property for such an event. Your clients were permitted to use the City property to exercise their rights during the event at issue. In addition, the fees that were charged are fees that are reasonably related to the City's actual costs related to the use of the City property for the event at issue as set forth below.

The charges at issue are valid charges that reflect actual costs incurred because of necessary Police and Fire details required by your client's very large event on the Cambridge Common. The fees that were charged by the City for this event included a \$25 park permit fee (which was paid), a \$50 entertainment fee (which was paid), detail fees of \$440 for two Cambridge fire fighters detailed for the event, fees for three Cambridge Police Officers detailed for the event totaling \$1,193.50, plus fees for three outside police officers detailed for the event (one each from Melrose, Everett and Chelsea) totaling \$1,155.00.

Please note that the City incurred significant additional fees that your client was not charged by the City, including the costs for twenty-nine other police officers who were on duty at the event for eight hours each at a total cost of \$12,400, three Public Works employees who were on duty for eight hours each at a total cost of \$1056.86, and both the \$100 fee for parking meter use for an event as well as the parking meter charges of \$420.

The fees that were charged to your client are fees that are charged by the City for such events as a matter of policy and practice and are charged routinely for such events without regard to who the speakers are or what they speak about. These fees are charged on a content-neutral basis, and are in no way intended to deter speech of any kind. The City does not waive fees for only certain groups based on whether City officials sympathize with the particular viewpoint of the groups speaking. The fees charged are based on long-time, objectively applied criteria established by the City for such events, based in part on the professional judgment of the Cambridge Police and Fire Departments as to the number of officers required and staff from other departments such as the Department of Public Works who must prepare for and clean up after any such large special event, as well as fees for parking meters which are charged by the Department of Traffic, Parking and Transportation to all users. As your client's event did occur, it is clear that their speech was not in fact curtailed by the fees at issue.

I have set forth for your information in the chart below the fees that were incurred, broken down by department and showing fees that were charged as well as fees that were not charged.

Department	Fees Charged	Fees Waived/Not Charged
Cambridge Police Department	3 Police Officers \$50 per hour for 7 hours for (2) officers: \$700 \$55 per hour for the Sergeant: \$385 10% surcharge for processing: \$108.50 Total fees: \$1,193.50	29 officers were on duty for 8 hours each Median salary \$400 for 8 hours (range of \$263 to \$579) Total hours: 232 Total fees waived/not charged: (approximately) \$12,400
Cambridge Police Department contracted with Officers from Melrose, Everett, and Chelsea	3 Police Officers \$55 per hour for 7 hours Melrose: \$385 Everett: \$385 Chelsea: \$385 Total fees: \$1,155	None
Fire Department/EMT	2 Fire Fighters \$50 per hour for 4 hours for (2): \$400 10% surcharge for processing: \$40 Total fees: \$440	None
Department of Public Works	\$25 permit fee (paid)	Public Works Supervisor, 8 hours \$448.55 Park Maintenance Worker, 8 hours \$326.65 Park Maintenance Worker, 8 hours \$281.66 Total hours: 24 Total fees waived/not charged: \$1056.86
License Commission	\$50 permit fee (paid) Entertainment license for amplification	None
Traffic & Parking	None	42 meters @\$10 per meter: \$420 \$100 application fee Total fees waived/not charged: \$520
	TOTAL FEES CHARGED: \$2,788.50	Total hours: 256 TOTAL FEES WAIVED/NOT CHARGED: \$13,976.86

If your clients are having difficulty paying the fees and would like to make payments over time, please feel free to contact me to discuss making such an arrangement.

Please let me know if you have any other questions.

Very truly yours,

Nancy E. Glowa
City Solicitor

From: Ruth Bourquin [mailto:RBourquin@aclum.org]
Sent: Wednesday, February 21, 2018 10:06 AM
To: Glowa, Nancy <neglowa@cambridgema.gov>
Subject: Women's March Fees

Dear Solicitor Glowa,

I am writing to try to clear up confusion on this matter. I was informed that City officials informed Representative Decker something to the effect of that they did not know why I was saying that Mass Peace Action was being charged fees for the Women's March. To be sure you have them, I have pasted in below the listing of what fees MAPA was told it was being charged and by whom and attaching the actual invoices for Cambridge Police, Cambridge Fire, Melrose PD and Everett PD. Actual invoices from Chelsea and the MBTA police have not yet been received.

I would be grateful if you could clarify the City's stance on the validity of these charges and its underlying policy about if and when such fees will (or will not) be charged in the future.

Thank you very much.

Cambridge Police	1,193.50
Everett Police	385.00
Chelsea Police	385.00
Melrose Police	385.00
MBTA Police	1,240.25
Cambridge Fire	440.00

Ruth A. Bourquin
Senior Attorney
American Civil Liberties Union of Massachusetts
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EXHIBIT F1 and F2

MBTA Transit Police Department

240 Southampton Street
Roxbury, MA 02118
(617) 222-1000

F1

To: **MASS PEACE ACTION**
11 GARDEN STREET
CAMBRIDGE, MA, 02138

Paid Detail Invoice for Police Service(s) provided for **HARVARD**
Account # : 180002

Date: 1/27/2018 18-616
Invoice #

<u>Date</u>	<u>Officer Name</u>	<u>Time</u>	<u>Location</u>	<u>Type</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>	<u>RF</u>
01/20/2018	CINTRON, RAPHAEL	10:30 to 15:30	HARVARD	O	5.00	50.00	\$ 250.00	
01/20/2018	HO, TALEE	10:30 to 15:30	HARVARD	O	5.00	50.00	\$ 250.00	
Subtotal:							\$500.00	
10% Surcharge:							\$50.00	
Total Amount Due:							\$550.00	

Please make check payable to the MASSACHUSETTS BAY TRANSPORTATION AUTHORITY for the amount due of: **\$550.00** and remit to the MBTA Police Department at the above address. Payment is due within fifteen (15) days of receipt of invoice.



Massachusetts Bay Transportation Authority

Invoice

F2

		DATE
		05/14/18
CUSTOMER NUMBER	CUSTOMER NAME	
	MASS PEACE ACTION	
	ADDRESS	
	11 GARDEN ST.	
INVOICE NUMBER	CITY, STATE, ZIP	
36843	CAMBRIDGE, MA 02138	
	ATTN:	Terms: Net 30
DATE OF SERVICE	SERVICES PERFORMED	AMOUNT
	REIMBURSEMENT TO THE AUTHORITY BY MASS PEACE ACTION FOR POLICE DETAILS	
	OVERTIME COST	\$275.00
	ADMINISTRATIVE FEE	\$27.50
	Inv.# 18-639	
	TOTAL	\$302.50

Detach at the above dotted line and attach with your remittance.
Please include Invoice Number on remittance.
Thank you.

Account Number	Customer Name:	Date
Invoice Number		Amount Due:



Make Checks payable to:
Massachusetts Bay Transportation Authority
Mail to: MBTA Accounts Receivable
P.O.Box 845824
Boston, MA 02284-5824

EXHIBIT G



Ruth A. Bourquin
Senior Attorney
(617) 482-3170 ext. 348
rbourquin@aclum.org

March 22, 2018

By Email

Mayor Marc McGovern
City Manager Louis DePasquale
Solicitor Nancy Glowa
Public Records Access Officer Jennifer Simpson
Cambridge City Hall
Cambridge, MA 02139

Re: Charging of Service Fees for Permitted Special Events

Dear Mayor McGovern, City Manager DePasquale, Solicitor Glowa and Public Records Officer Ms. Simpson:

I am writing again on behalf of the organizers of the Women's March held on Cambridge Common on January 20, 2018, with regard to the above-referenced issue and in response to Solicitor Glowa's email dated March 2, 2018.

As an initial matter, I am writing to convey my clients' offer to meet in the very near future to try to resolve these issues collaboratively. As discussed more below, working together toward a good City policy is a high priority for my clients.

I am also writing to lay out, with some detail, the grounds on which we believe the City's uncodified, subregulatory policy with regard to charging fees for police and other public services, as a condition of issuing permits for events on Cambridge Common and other public parks, is not consistent with important constitutional principles. We want to share more detail than was in my first letter, so as to give the City fair notice of the bases of our concerns and in the hopes of facilitating a negotiated resolution.

Finally, a further public records request is included at the end of this letter.

Background

As you know, the January 2018 Cambridge Women's March was not actually a "march"; it was an assembly at a fixed location on the Common, to listen and respond to a set of designated speakers on matters of political and public

concern. Thousands of people were expected to and did in fact attend the event.

A little more than a week prior to the event, City employees verbally told the organizers that they might be charged for some police details. This led some of the expected organizers to back out. Not until a couple of days before the March were the remaining organizers informed, again orally, that they would be charged thousands of dollars for costs related to the provision of police details and EMT services. They did not have sufficient funds to pay these charges and also doubted that the assessment of fees was legal, particularly since they had not been charged such fees for similar events in the past.

Soon after the March, I sent a public records request to the City seeking documents showing what law or definitive policy justified the charging of these service fees. All that I received in response to this public records request were three one-page documents containing the following statements:

- (1) "A gathering of 200 or more people *may* require a police detail and/or DPW personnel in attendance at the expense of the applicant." Parks and Public Areas (emphasis supplied);
- (2) Permittees "shall furnish *if necessary*, at their own expense, fire, police detail or other protection as the City of Cambridge *may* direct." Park and Public Area Usage Policy (emphases added).
- (3) "A public event, *depending on the size and nature of the event may* require a number of permits from various departments...", and "An estimated cost for city support services (*if applicable*) will be discussed and noted under the 'Department Approval' Portion." Guidelines for Special Events in the City of Cambridge (emphases supplied).

The Women's March organizers never received a copy of any Department Approval of their Special Permit with any estimates listed, nor did they sign any other documents agreeing to pay any service charges; yet, they subsequently received bills totaling thousands of dollars from the Cambridge police, police departments from other cities or towns that the City of Cambridge must have invited to provide services, and the Cambridge Fire Department.

The public records response followed the initial letter I had sent the City on January 31, 2018, conveying our general concerns as to the constitutionality of the City's demand for payment of such costs. On March 2, Solicitor Glowa responded to the effect that the City sees no legal problem

with the charging of these fees, but that it would offer my clients the option of a "payment plan" if needed. She delineated the total costs of police and other services for the event, indicating which were being charged the Women's March organizers and which were not being charged. No explanation was provided for why the costs that were charged were charged or why the costs that were not charged were not charged.

Contrary to a suggestion in Solicitor Glowa's email, the organizers, as well as the ACLU of Massachusetts as an organization, are concerned about the impact of the City's practices on the exercise of free speech of all who seek permits to use the Cambridge Common and other City parks. We are not seeking special treatment for this event, but rather a lawful policy for all such demonstrations of free speech and assembly.

Meeting to Try to Achieve Resolution

Before sharing some more detail about why we think the City's policy and practices are unconstitutional, we want to emphasize that we want a constructive relationship with the City of Cambridge, in which many of us reside and which all of us respect. Maintaining a positive working relationship with the City is a priority for us.

In addition, we share many mutual interests. We believe that a large percentage of the residents of Cambridge support strong protections for the exercise of free speech and assembly rights and also recognize the value of a fair permitting process to ensure public order and safety. Because the City's current policy with regard to service fees actually creates a disincentive for organizers of events to seek permits, we think it is not in the best interest of the City or its residents.

Therefore, my clients and I would be more than willing to meet with the three of you and other relevant officials to try to resolve this matter, if you think such a meeting could be of any use. At such a meeting, we will press our request that the City suspend its current policy with regard to charging public service fees.

Of course, my clients also do not want this matter to continue unresolved for much longer, particularly as other events are being planned and could be adversely impacted by the same issues we are raising.

If you would like to meet to try to seek resolution within the next three weeks – prior to April 13 – we would be very pleased to make ourselves available for such a meeting.

Constitutional Issues

As you know, the Cambridge Common is a special space within the City in terms of its ability to accommodate large numbers of people seeking to assemble to share and express views. The Cambridge Common, like the Boston Common, is the “apotheosis” of a traditional public forum. *Glik v. Cuniffe*, 655 F.3d 78, 84 (1st Cir. 2011), or as the Supreme Court has put it, it is a “quintessential public forum,” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983), and an “archetype of a traditional public forum.” *Frisby v. Schultz*, 487 U.S. 474, 480 (1988).

In such a forum, “the rights of the state to limit the exercise of First Amendment activity are ‘sharply circumscribed.’” *Glick*, 655 F.3d at 84, quoting *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. at 45.

Requiring the payment of fees as a condition of obtaining a permit to access a traditional public forum is per se a “prior restraint on speech,” and, therefore, there is a “heavy presumption” against its constitutional validity. *Forsyth County*, 505 U.S. 123, 130 (1992) (and cases cited and quoted). See also *Ward v. Rock Against Racism*, 491 U.S. 781, 795 n. 5 (1989) (“The relevant question [in determining whether something is a prior restraint] is whether the challenged regulation authorizes suppression of speech in advance of its expression”); *City of Lakewood v. Plain Dealer Publishing Co.*, 486 US 750, 757 (1988) (“a licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint”); *Transportation Alternatives Inc. v. City of New York*, 340 F.3d 72, 77 (2d Cir. 2003) (“A fee as a condition on an assembly or demonstration in a public park is a prior restraint on speech”).¹

Moreover, government-imposed restrictions on access to public open spaces such as parks are evaluated more stringently than such restrictions on streets because their use for expressive activities rarely implicates other important governmental interests and because public parks and sidewalks are “uniquely

¹ The City here informs permit applicants that fees for services may be charged and implies that, if they are, the applicants can be required to pay them in advance of the event. The “obligation” to pay the fees was established prior to the March and gave the organizers pause as to whether they should go forward and is affecting their planning of future events. The fees are therefore a prior restraint that has a chilling effect on exercise of free speech and assembly rights, both for the event immediately in question and future ones where the same issues will arise. The fact that the organizers of the Women’s March resisted paying bills prior to the March does not change the fact that the requirement of paying the fees as a condition of obtaining a permit, as a matter of law, is a prior restraint, which they can challenge. Of course, whether or not it is considered a prior restraint, the “policy” is unconstitutional as even a time, place and manner restriction due to the lack of mechanisms to control the exercise of discretion and lack of ample alternatives.

suitable for public gatherings and the expression of political or social opinion.” *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1022 (9th Cir. 2009) (internal citation omitted), cert. denied, 130 U.S. 1569 (2010).

While, even in such public fora, government can impose reasonable time, place and manner restrictions, any such purported restrictions “must not 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.” *Forsyth County v. Nationalist Movement*, 505 U.S. at 130; see also *Clark v. Community for Creative Non-Violence*, 468 U. S. 288, 293 (1984). They “may not delegate overly broad licensing discretion to a government official,” because such a scenario “allows arbitrary application,” which is “inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view.” *Forsyth County*, 505 U.S. at 130, quoting *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 649 (1981).

The current Cambridge “policy” fails these tests for the following reasons.

1. Overly Broad Delegation of Discretion.

In numerous cases, the courts have evaluated what is required in order for a governmental body to satisfy the requirement of not delegating overly broad discretion with regard to charging service fees.

In *Forsyth County*, the Court made clear that, in order “[t]o curtail [the] risk [of arbitrary application], ‘a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license’ must contain ‘narrow, objective, and definite standards to guide the licensing authority.’” 505 U.S. at 131, quoting *Shuttlesworth v. Birmingham*, 394 U. S. 147, 150-151 (1969).

The Court in *Forsyth County* found unconstitutional a duly-enacted Ordinance (something that apparently does not exist in Cambridge), which in many ways provided more guidance to the administering officials than is provided by the “policy” at issue here. The Ordinance provided “for the issuance of permits for parades, assemblies, demonstrations, road closings, and other uses of public property and roads by private organizations and groups of private persons for private purposes.” The stated purpose of the Ordinance was to defray costs “necessary and reasonable for protecting persons participating in or observing a permitted event” to the extent they “exceed[] the usual and normal cost of law enforcement [and] for which those participating should be held accountable and responsible.” The Ordinance required the permit applicant to defray these costs by paying a fee, the amount of which was to be fixed “from time to time” by the Board. The Ordinance as amended also provided that every permit applicant “shall

pay in advance for such permit, for the use of the County, a sum not more than \$1,000.00 for each day such parade, procession, or open air public meeting shall take place." In addition, the county administrator was empowered to "adjust the amount to be paid in order to meet the expense incident to the administration of the Ordinance and to the maintenance of public order in the matter licensed." 505 U.S. at 126 -27.

The Cambridge "policy" on charging service fees – discernable only by looking at passing phrases in various executive documents – says only that: (1) A permit applicant "shall furnish *if necessary*, at their own expense, fire, police detail or other protection as the City of Cambridge may direct." Park and Public Area Usage Policy (emphases added); (2) "A gathering of 200 or more people *may require* a police detail and/or DPW personnel in attendance at the expense of the applicant," Parks and Public Areas (emphasis supplied); and (3) "A public event, *depending on the size and nature of the event may require* number of permit from various departments...", and, if so, "An estimated cost for city support services (*if applicable*) will be discussed and noted under the 'Department Approval' Portion," Guidelines for Special Events in the City of Cambridge (emphasis added).

Nothing in the "policy" says what about the "size and nature of the event" might trigger the need for additional permits that may come with additional charges. Nothing in the "policy" says what criteria must be used to decide whether a gathering of 200 or more people will or will not generate a demand for payment for police, fire, and/or DPW services. And nothing in the "policy" sets forth any criteria for when costs for support services will or should be deemed "applicable." Moreover, in the face of our public records request, the City provided no documents that shed light on any criteria that are actually applied.

Moreover, the City "policy" leaves room for charging fees based on the likelihood of counter-protesters. Indeed, the Women's March organizers have reason to believe this was a factor with regard to the January 20 event. As the Court in *Forsyth County* made clear, when a policy leaves open the possibility of charging more based on the potential reaction of those listening, the regulation is not sufficiently content neutral to qualify as a reasonable time, place and manner restriction.²

² "Listeners' reaction to speech is not a content-neutral basis for regulation. ... Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob." 505 U.S. 134-135 and cases cited. See also *S. Or. Barter Fair*, 372 F.3d 1128, 1141 (9th Cir. 2004), cert. denied, 546 U.S. 826, (2005) (With regard to the charging of fees to cover the reasonable and necessary cost of processing an application (as opposed to police and other services), "the standard does not allow the governing body to gauge the reaction the applicant's message will generate and set the fee according to the projected costs of policing hostile listeners, a feature the

Moreover, it matters not at all to the constitutional analysis whether in the case of the Women's March city officials did or did not in fact charge (or charge more) due to the fear of counter-protestors or based on their feelings about the content of the Women's March. Whether the City in a particular case actually applied legitimate, content-neutral criteria is irrelevant.

Facial attacks on the discretion granted a decisionmaker are not dependent on the facts surrounding any particular permit decision. See *Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 770 (1988). "It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion." *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940). Accordingly, the success of a facial challenge on the grounds that an ordinance delegates overly broad discretion to the decisionmaker rests not on whether the administrator has exercised his discretion in a content-based manner, but whether there is anything in the ordinance preventing him from doing so.

Id. at 133 n. 10.

Here, the City "policy" gives unelected officials complete discretion over whether to impose service fees or not, how much to charge, and whether or not to waive some or all of such costs. The City simply does not have a policy that sufficiently guides the exercise of discretion as required under the First Amendment. Numerous cases in addition to *Forsyth County* support this conclusion.³

The contrast between the City's "policy" and the Ordinance at issue in *Sullivan v. City of Augusta*, 511 F.3d 16 (1st Cir. 2007), cert. denied, 555 U.S. 821 (2008), is very instructive. In *Sullivan*, the Court upheld against constitutional attack a City of Augusta Ordinance that clearly stated that "The cost of the permit shall be one hundred dollars (\$100.00), plus the costs

Supreme Court disapproved of in *Forsyth* as impermissibly content-based"); *Church of American Knights of the Klu Klux Klan v. City of Gary*, 334 F.3d 676, 680-81 (7th Cir. 2003) ("a city cannot in lieu of denying the permit charge the applicant for the expense to the city of reining in the hecklers").

³ See, e.g., *Long Beach Area Peace Network, supra*; *Transportation Alternatives Inc. v. City of New York, supra*; *Sentinel Communications Co. v. Watts*, 936 F. 2d 1189, 1207, rehearing denied, 947 F.2d 1492 (11th Cir. 1991) ("The state of Florida and the DBS simply cannot continue to take an utterly discretionary, "seat of the pants" regulatory approach towards activity that is entitled to first amendment protection; the state agencies in this case must establish some type of written regulatory or statutory scheme with specific criteria to guide the discretion of officials administering it"). Cf. *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022 (9th Cir. 2005) (upholding a service fee provision in an Ordinance which cabined discretion).

of traffic control per city collective bargaining agreement and clean up costs, as estimated by the Police Department. The permit fee will not include the cost of police protection for public safety.”

Thus, the Ordinance there said costs “shall” be charged, “shall” be limited to costs for “traffic control and clean up,” and shall not include “police protection for the public safety.”

In Cambridge, the “policy” says only that fees for police, fire or DPW services “may” be charged “if applicable” without any guideposts for when they must or will be charged and no explanation of the types of duties of city personnel for which fees can be charged. Charges are not limited to traffic control and clean up, or to anything in fact.

For all these reasons, the Cambridge “policy” is unconstitutional because:

The decision how much to charge for police protection or administrative time-or even whether to charge at all-is left to the whim of the administrator. There are no articulated standards either in the ordinance or in the county's established practice. The administrator is not required to rely on any objective factors. He need not provide any explanation for his decision, and that decision is unreviewable. Nothing in the law or its application prevents the official from encouraging some views and discouraging others through the arbitrary application of fees. The First Amendment prohibits the vesting of such unbridled discretion in a government official.

Forsyth County, 505 U.S. at 133.

2. No Ample Alternatives.

The City’s special permit policy and its related “policy” concerning charging of certain fees for services provided on the day of an event apply to all City parks. As discussed above, public parks are “uniquely suitable for public gatherings and the expression of political or social opinion.” *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d at 1022. Certainly, City parks are the only forum appropriate for an event like the Women’s March, which in spite of its name was not a march but an assembly of hundreds of people in one place to share ideas about current political issues.

Because the “policy” at issue applies to all city parks, it imposes a barrier to the use of any and all possible venues for such an event. It therefore does not allow

for ample alternatives for the kind of speech at issue; indeed, it does not allow for any. For this reason too the “policy” violates the First Amendment.⁴

3. Massachusetts State Constitution.

The preceding points are based on the First Amendment to the United States Constitution. Various provisions of the Massachusetts state constitution also provide protection for free speech and assembly, including Article 16 of the Declaration of Rights as amended (“The right of free speech shall not be abridged”) and Article 19 of the Declaration of Rights (“The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good ...”). As the Supreme Judicial Court has ruled, the protections in these state constitutional provisions “are comparable to the rights of ‘freedom of speech’ and ‘of the press,’ and the right of the people ‘peaceably to assemble,’ declared in the First Amendment to the Constitution of the United States,” but, with regard to the scope of their protections “Federal decisions are persuasive, but not controlling.” *Bowe v. Secretary of the Commonwealth*, 320 Mass. 230, 249-50 (1946). That Article 16 provides greater protection than the First Amendment was made clear in *Commonwealth v. Sees*, 374 Mass. 532 (1978), where the Court found that an ordinance did not violate the First Amendment but did violate Article 16.

Given the greater protection provided by our state constitution for expressive activity, we believe any provision shifting the costs of protecting public safety that are inherently associated with such activity, particularly in quintessential public fora such as the Common and other City parks, will be found to be unconstitutional under our Declaration of Rights.

⁴ In *Sullivan*, the court concluded (over a strong dissent) that, because no permit and thus no fees were required for marches on city *sidewalks*, the policy that imposed fees for a march on city *streets* allowed for ample alternatives. Similarly in *Frisby v. Shultz*, 487 U.S. 484 (1988), the court concluded that an ordinance prohibiting “picketing” in residential neighborhoods allowed for ample alternatives because people were still free to go into those neighborhoods, knock on doors, hand out leaflets, and engage in other forms of communication not involving picketing. In *Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), an ordinance that precluded nude dancing establishments in some areas of the municipality but allowed them to be sited in a significant part of the community, was found to allow ample alternatives. And, in *Ward v. Rock Against Racism*, in which the original desired forum itself was available but subject to sound-level restrictions, the ample alternative requirement was met. 791 U.S. at 802-03. Each of these cases is distinguishable here, where the City’s “policy” of charging these fees applies and imposes the same restraint in each and every place within the City appropriate for the gathering of so many people to listen to designated speakers. It not only leaves no “ample alternatives”; it leaves none. See *Bay Area Peace Navy v. United States*, 914 F.2d 1224 (9th Cir. 1990) (restriction that left organizers without any access to its intended audience did not leave ample alternatives); *Dr. Martin Luther King, Jr. Movement, Inc. v. City of Chicago*, 419 F.Supp. 667, 674 (N.D.Ill.1976) (parade route through black neighborhood not constitutional alternative to route through white neighborhood when intended audience was white).

We also believe that, because the services being provided by the police and fire departments on January 20, 2018 were for the benefit of the public at large and not the permittees, costs for these services may not appropriately be categorized as “fees” and instead move into the realm of “taxes” that can only be authorized by the Legislature. See, e.g., *Emerson College v. City of Boston*, 391 Mass. 415, 424, 425 (1984) (special assessment for fire protection in certain buildings was a tax because fire protection benefits the community as a whole; a necessary element of a lawful “fee” as opposed to an unlawful “tax” is that it is charged in exchange for a particular governmental service which benefits the party paying the fee in a manner “not shared by other members of society”) (citing *National Cable Television Ass’n, Inc. v. U. S.*, 415 U.S. 336, 341-43 (1974)) (fees charged for community antenna television regulation may not include charges for costs that “inured to the benefit of the public” as opposed to “the value to the recipient”).⁵

Public protection for public assembly in traditional public fora is for the benefit of society at large. For this reason, any policy purporting to authorize the charging of the costs for such protection may only be adopted pursuant to clear authority from the Legislature and must carefully circumscribe executive official discretion.

Public Records Request

Pursuant to G.L. c. 66A, § 10, I am now requesting all public records showing:

- 1). How many and which events over the past 5 years have received a special permit or were otherwise authorized to hold an assembly of at least 200 people on Cambridge Common, another City park, or any City-owned property;

⁵ Cases discussing whether a charge is a “fee” or a “tax” often distinguish between whether the charge is for use of government property or whether it is a regulatory fee. See, e.g., *Silva v. City of Attleboro*, 454 Mass. 165, 171 (2009) (distinguishing proprietary fees from regulatory fees which are not charged for use of property). Fees for use of public property may raise constitutional issues of free speech and assembly rights in ways that regulatory fees generally would not. Unlike service fees for protection of the public, the fees charged for obtaining the permit for the March are regulatory fees. Ordinances 2.54.010 and 2.54.020 confer on the Commissioner of Public Works the City’s authority over the parks. To the extent that such power encompasses the power to issue permits, the Commissioner is also empowered to assess reasonable “fees” to cover costs associated with their issuance. G.L. c. 40, § 22F. But, under the reasoning of cases distinguishing between fees and taxes, because the public safety services rendered on January 20 and at similar events in City parks are for the public and not the applicants for the permit, the costs do not constitute “fees” and therefore are not covered by that authority. And, of course and in any event, even if these charges are properly called “fees” within the meaning of the statute and constitution, the rules for setting such fees must comply with federal and state constitutional requirements protecting the right to assembly and of free speech, including with regard to not conferring too much discretion.

- 2). For each event, how many people were projected by the organizers to participate; and
- 3). For each event, whether the organizers were charged for police, DPW, fire and/or EMT services and if so, how much were they charged for each and how many such costs related to the event were not charged, and if they were not charged for any such costs at all, why not.

I respectfully ask on behalf of my clients that the City waive any fees for collection of these documents because this matter concerns the public interest.

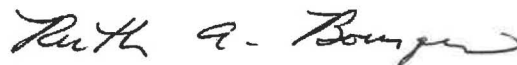
Conclusion

If representatives of the City would like to meet on or before April 13 to try to reach a collaborative solution to the problems we are raising, we would be very eager to make that happen. Please contact either Michelle Cunha of Mass. Peace Action at 617-354-2169 or me at the email or number on this letterhead to arrange the meeting.

Whether or not we meet, however, we are asking that the City rescind the outstanding bills for city services for the Women's March (and indeed for any past event) and cease applying a policy of charging service fees until such time as the appropriate legislative bodies enact laws authorizing a policy that is consistent with both the federal and state constitutions.

Thank you for your consideration of these very serious issues.

Sincerely,



Ruth A. Bourquin

EXHIBIT H

FROM: EVERETT POLICE DEPARTMENT
45 ELM STREET
ASSIGNMENT OFFICE
EVERETT, MA 02149

01/26/18

2158

TO: MASSACHUSETTS PEACE ACTION
ATTN: MICHELLE CUNHA
11 GARDEN STREET
CAMBRIDGE, MA 02138

*** DETAIL INVOICE ***

date	inv#	hours	officer	total	paid	bal
01/20/18	147206	7.00	63 LT GABRIEL	385.00		385.00
CAMB COMMON WOMENS PEACE RALLY 1000-1600						
TOTAL:						385.00

*** REMIT TO THE CITY OF EVERETT/ ASSIGNMENT OFFICER, 45 ELM STREET **
*** EVERETT, MA 02149 ***** 617-394-2371 MON - FRI 7:30 AM - 3:30 PM **
*** NET 30 DAYS
***** PLEASE RETURN COPY OF INVOICE WITH PAYMENT *****
*****IMPORTANT NOTE*****
** IF DETAIL NEEDS TO BE CANCELLED, YOU MUST CALL AT LEAST ONE HOUR **
** PRIOR TO THE START TIME OF DETAIL, TO AVOID MINIMUM CHARGE *****
** CALL 617-389-2120 24 HRS A DAY FOR SERVICE OR CANCELLATIONS *****

*
* IF THIS INVOICE IS NOT CONTESTED WITHIN 30 DAYS OF INVOICE DATE, IT *
* MUST BE PAYED IN FULL. NO CREDIT WILL BE APPLIED TO THIS OR ANY *
* OTHER INVOICE. *



EVERETT POLICE DEPARTMENT
ASSIGNMENT OFFICE

45 Elm Street • Everett, Massachusetts 02149 • Main Telephone 617-394-2371

COMPANY NAME & BILLING ADDRESS:

CAMBRIDGE WOMEN'S
PEACE RALLY
CAMP

TELEPHONE:

DATE OF DETAIL:

1/20/18

LOCATION OF DETAIL:

THE CAMBRIDGE COMMONS

START TIME

1000

FINISH TIME

1600

TOTAL HOURS

(7)

CHECK IF

- ☐ REGULAR
☐ SUPERVISOR
☐ OVERNIGHT
☐ HOLIDAY
☐ OTHER

NAME / RANK / ID NUMBER OF OFFICER / COMPUTER NUMBER

LT JAMES M. GARNIER #63

Detail Officer's Signature

Supervisor's Signature

Client's Signature

OFFICE USE ONLY

HRS. ADJ.

BY

AMT.

INITIALS

ATTENDANCE

BY

DATE

INITIALS

EXHIBIT I

MELROSE POLICE DEPARTMENT

56 West Foster Street
Melrose, MA 02176
(781) 665-1212 FAX: (781) 979-4213

Invoice

DATE	INVOICE #
1/24/2018	14085

BILL TO

Mass Peace Action
11 Garden St.
Cambridge, MA 02138

TERMS

DETAIL	HOURS	RATE	AMOUNT
Cambridge Ptln. Sasso - 1/20/18	7	55.00	385.00



MELROSE POLICE DEPARTMENT
56 WEST FOSTER STREET
MELROSE, MA 02176

DATE

1/20/18

OFFICER SASSO BADGE/ID# 92LOCATION Cambridge CampusTIME OF START 10:00amCONTRACTOR/VENDOR Mass Peace Action

TIME OFF FOR LUNCH _____

ADDRESS 11 Garden St.TIME END OF DETAIL 4:00pmCITY Cambridge STATE MATOTAL HOURS CHARGED 7PHONE 617-354-2169

CONTRACTOR/VENDOR SIGNATURE _____

RESPONSIBLE PARTY BILLING INFORMATION:

COMPANY Mass Peace ActionADDRESS 11 Garden St. Cambridge, MA 02138SIGNATURE Sgt Bennett #82

PINK - CONTRACTOR

WHITE AND YELLOW - STATION

Total**\$385.00**

