

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

MICHAEL DIPAOLA,
Plaintiff

v.

TOWN OF PORSTMOUTH,
by and through its Treasurer, **LISA**
MILLS, and **GARY CROSBY**, in his
individual and official capacities as the
Town Planner and Acting Zoning
Enforcement Officer for the Town of
Portsmouth,
Defendants

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C.A. No. 21-

Jury trial demanded

COMPLAINT

I. Introductory Statement

1. This action is brought by the Plaintiff seeking declaratory and injunctive relief for acts and/or omissions of Defendants in violation of Plaintiff's right to freedom of speech guaranteed under the First and Fourteenth Amendments to the United States Constitution, actionable pursuant to 42 U.S.C. § 1983, and under Article 1, § 21 of the Rhode Island Constitution.

II. Parties

2. Plaintiff Michael DiPaola is a resident of the Town of Portsmouth, County of Newport, State of Rhode Island.

3. Defendant Town of Portsmouth ("Town") is a duly authorized and organized municipality under the laws of the State of Rhode Island and is sued by and through its Treasurer, Lisa Mills, the official designated by state law, R.I. Gen. Laws § 45-15-5, to be named in a suit for relief against the Town.

4. Defendant Gary Crosby is sued in his individual and official capacities as the Town Planner and Acting Zoning Enforcement Officer for the Town.

III. Jurisdiction

5. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, 1367, 2201 and 2202.

IV. Venue

6. Venue is proper in this Court insofar as all of the Defendants reside or may be found in the District of Rhode Island in compliance with the requirements set forth in 28 U.S.C. § 1391.

V. Materials Facts

A. Chronology of Events

7. At all relevant times, Plaintiff owned and owns several residential properties in the Town.

8. On or about January 11, 2021, Plaintiff prepared and erected a political sign on his property located at 184 Bristol Ferry Road, Portsmouth, RI., which expressed his opinions criticizing perceived selective and corrupt code enforcement by the Town.

9. Plaintiff posted the first sign after five years of frustration and perceived harassment from Town building officials, both in excessively enforcing codes against him and refusing to enforce building codes against others.

10. For example, on September 21, 2015, Plaintiff was issued a notice of violation by the Town that treated a 20-foot temporary metal storage container on his property like a “shed/accessory structure,” which required him to obtain a building permit and relocate the shed to the back yard.

11. To avoid the hassle of contesting the violation, Plaintiff quickly complied.

12. However, he concurrently observed approximately 40-50 other similar structures/containers located on properties in the Town that were not being subjected to the same

regulatory requirements under the Town building code, zoning ordinance, and property tax classification scheme.

13. Over the last 5 year, the Plaintiff has observed and reported to the Town well over 100 other similar structures/containers located on properties in the Town that were not being subjected to the same regulatory requirements.

14. Plaintiff reported the above selective enforcement through various emails, certified mailings, and also in person to Town officials, but nothing was done.

15. More recently, in the spring of 2020, Plaintiff noticed that the owner of property adjacent to one of Plaintiff's properties had commenced to build an addition on their property, for which a foundation was installed approximately fifteen (15) feet from Plaintiff's property line.

16. Plaintiff observed that the construction was dumping water onto his property.

17. Plaintiff called the Town and spoke to Gareth Eames ("Mr. Eames"), the Town Building Inspector, who ignored numerous violations associated with the neighbors' construction of which the Plaintiff complained, including a) no permits for the front porch addition, b) no permits for the rear deck re-build, c) no structural stamped drawings for the addition; and, d) no Soil Erosion and Sediment Control Plan, among other violations.

18. Despite Plaintiff's complaints that building codes were being selectively enforced, Mr. Eames refused to correct any building violations and told Plaintiff that he would have to take him to court.

19. On January 12, 2021, Plaintiff posted two additional signs addressing the same topic.

20. Over the next several days, Plaintiff added more signs for a total of nine signs, each sign less than twenty (20) square feet in areas, photographs of which are attached hereto and incorporated herein by reference as **Exhibit A**.

21. On January 14, 2021, Plaintiff received by email a Notice of Violation (“Notice”) that his signs were in violation of Section B of Article IX of the Town Zoning Ordinance (“Town Sign Ordinance”) (Town of Portsmouth Code of Ordinances, Sec. 405-IX.B.).

22. Attached hereto as **Exhibit B** and incorporated herein by reference is a copy of the foregoing Notice.

23. Attached hereto as **Exhibit C** and incorporated herein by reference is a copy of the Town Sign Ordinance.

24. Specifically, the Notice identified the following violations:

- [a] “Section B (2) of the Article states no sign shall be shall be [sic] erected, installed, displayed, kept, modified, repaired, placed or replaced unless a building permit is issued therefore. A search of Town records indicates no building permit has been issued to you to erect these signs.
- [b] Section B (3) of the Article provides for a variety of signs permitted in any Zoning District. The signs you have erected on your property do not meet any of the permitted signs criteria and are therefore prohibited by the ordinance.
- [c] Section B (4) of the Article provides for a variety of signs permitted in Residential Districts. The signs you have erected on your property do not meet any of the permitted signs criteria and are therefore prohibited by the ordinance.

[d] Section B (7)(g) of the Article prohibits sign which ‘distract the vision of drivers’ or which ‘interfere with, mislead or confuse traffic.’”

25. The Notice directed the Plaintiff to bring his property into compliance by removing all signs in violation of Article IX within seven (7) days.

26. The Notice also advised the Plaintiff that “every person convicted of a violation of this ordinance may be punished by a fine of not more than five hundred (\$500) dollars for each offense, in this case for each individual prohibited sign, and each day of the existence of any such violation shall be deemed a separate offense.”

27. Plaintiff would like to erect political signs on several other residential properties he owns in the Town, but he has refrained from doing so because he faces potential prosecution and the imposition of monetary penalties under the Town Sign Ordinance.

B. Content-Based Regulation of Speech

28. Section 405-IX.B. of the Town Sign Ordinance regulates all speech based on content by a) permitting only signs with specified content to be erected, b) exempting certain permitted signs from the requirement of obtaining a permit; and, c) prohibiting all other speech, including political speech.

29. Thus, the Town Sign Ordinance regulates political speech in a more restrictive manner than other types of speech, among other ways, as follows:

a. **Content Based Ban.** The Town Sign Ordinance does not permit political signs in any zoning district.

b. **Content-Based Exemptions.** Pursuant to Sections B.3 and B.9, the following signs are exempt from the requirement to obtain a permit in any zoning district:

- i. One (1) sign, no greater than one and one-half square feet ($1\frac{1}{2}$ ft.²) in area displaying the name and address of the occupant and/or identifying a permitted or accessory use.
- ii. Announcement or bulletin boards provided they are erected for a period not to exceed two (2) weeks in conjunction with advertisement of an upcoming event. No more than two (2) such signs shall be permitted for any event and the total combined sign area for all signs for any one event shall not exceed thirty-two square feet (32 ft.²).
- iii. Temporary “For Sale” or “For Rent” signs no greater than six square feet (6 ft.²) in area in a residential zone and no greater than twelve square feet (12 ft.²) in area in any other zone that advertises the sale, lease, rental, etc. of real property upon which the sign is located. These signs shall not be illuminated.
- iv. Traffic signs or signs erected by a public or municipal agency in discharge of its governmental functions.
- v. Instructional or directional signs, identifying on-premise traffic, parking or other functional activity, such as lavatory facilities, telephone, sections of a building, entrances, offices, etc. bearing no commercial advertising. Each sign shall not exceed two square feet (2 ft.²) in area.
- vi. Accessory signs incidental to a business or a profession conducted on the premises indicating hours of operation, credit cards, business affiliations, and the like, provided the total area does not exceed two square feet (2 ft.²); and accessory signs such as no trespassing, or other

such signs regulating the use of the property upon which it is located, of no more than two square feet (2 ft.²) in area per sign.

- vii. Any public notice or warning required by a valid and applicable federal, state or local law, regulation or ordinance.

c. **Content-Based Permissible Signs in Residential Districts.** The following signs are the *only* signs permitted in a residential zoning district:

- i. All signs permitted under Section B.3. above.
- ii. One sign, no greater than twelve square feet (12 ft.²) in area, identifying a legally maintained nonconforming use. The location of such signs shall comply with the side yard setback provisions of the Land Space Requirements Table in Article III. for the zoning district in which it is located. Such sign shall be placed no closer than ten feet (10') from the front lot line and shall not project above the height of any principal building. The overall height of a freestanding sign in these districts shall not exceed ten feet (10').
- iii. One sign, no greater than twelve square feet (12 ft.²) in area, identifying a use permitted by special use permit or use granted by variance proceeding. The location of such signs shall comply with the side yard setback provisions of the Land Space Requirements Table in Article III. for the zoning district in which it is located. [Amended 8-15-1994]
- iv. Permanent signs at major entrances to residential developments or open space entrances designed only to identify such developments or spaces and do not exceed twelve square feet (12 ft.²) in area.

d. **Size Limits.** Imposing size limitations on signs based on content. *See, supra*, ¶¶28 (b) and (c).

e. **Prior Restraint--Permitting.** Imposing a requirement that a permit be obtained to erect certain types of signs based on content.

f. **Prior Restraint--Unbridled Discretion.** Granting unbridled discretion in both the issuance of permits, Town Sign Ordinance B.2, and the determination of whether a posted sign is in violation “by reason of size, location, content, coloring or manner of illumination, obstruct, hinder or distract the vision of drivers or obstruct or detract from the visibility or effectiveness of any traffic sign or control device on public streets and roads or which interfere with, mislead or confuse traffic,” Town Sign Ordinance Sec. B.7.g).

C. The Importance of Political Signs

30. The Supreme Court has held that “the First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office.”¹

31. Communication by signs and posters is virtually pure speech.²

32. The Supreme Court has further held that residential signs are a form of unique expression entitled to the highest degree of protection under the Free Speech Clause of the First Amendment.³

33. Displaying a sign from one’s own residence often carries a message quite distinct from placing the same sign someplace else or conveying the same text or picture by other means,

¹ *Burson v. Freeman*, 504 U.S. 191, 196, 198 (1992).

² *Arlington County Republican Comm. v. Arlington County, Virginia*, 983 F.2d 587, 593 (4th Cir. 1993) (citing *Baldwin v. Redwood*, 540 F.2d 1360, 1366 (9th Cir.1976), *cert. denied, sub nom., Leipzig v. Baldwin*, 431 U.S. 913 (1977)).

³ *City of Ladue v. Gilleo*, 512 U.S. 43, 57-59 (1994); *see also Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 501 (1981)(“The outdoor sign or symbol is a venerable medium for expressing political, social and commercial ideas. From the poster or ‘broadside’ to the billboard, outdoor signs have played a prominent role throughout American history, rallying support for political and social causes.” (internal citation and quotations omitted)).

insofar as, by their location, such signs can provide information about the identity of the “speaker.”⁴

34. A person who puts up a sign at his or her residence often intends to reach neighbors, an audience that could not be reached nearly as well by other means.⁵

35. Political signs are an unusually cheap and convenient form of communication that may have no practical substitute, by which people of modest means may become involved in political campaigns and show their support for a candidate or cause.⁶

D. First Amendment Facial Challenge

Content-Based Discrimination

36. The Town Sign Ordinance, which grants more favorable treatment to non-political than political speech by prohibiting the latter signs altogether and permitting certain signs without a permit, regulates the erection of signs based on content.⁷

37. A restriction on speech is content-based when the message conveyed determines whether the speech is subject to restriction.⁸

38. Content based restrictions on free speech “must be subjected to the most exacting scrutiny.”⁹

39. Content discrimination in the regulation of the speech of private citizens on private property is presumptively impermissible.¹⁰

⁴ *City of Ladue*, 512 U.S. at 56.

⁵ *Id.* at 57.

⁶ *Id.*

⁷ *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 514-515 (U.S. 1981)(plurality opinion)(municipal billboard ordinance which impermissibly discriminated on basis of content by permitting on-site commercial speech while broadly prohibiting noncommercial messages held unconstitutional violation of First Amendment on its face); see *Vono v. Lewis*, 594 F.Supp.2d 189, 204 (D.R.I. 2009)(Smith, J.)(A governmental determination that “the communication of commercial information is of greater value than the communication of . . . political speech, the most highly prized category of speech, . . . inverts the First Amendment's hierarchy.”).

⁸ *City of Cincinnati v. Discovery Network, Inc.* 507 U.S. 410 (1993).

⁹ *Burson v. Freeman*, 504 U.S. 191, 196, 198 (1992).

¹⁰ *City of Ladue*, 512 U.S. at 59 (O'Connor, J., concurring).

40. To survive strict scrutiny, a content-based restriction must serve a compelling governmental interest and must be narrowly drawn to achieve that purpose, such that it is the “least restrictive” alternative available.¹¹

41. Governmental limitations on speech “rarely survive strict scrutiny.”¹²

42. The Town’s presumed interests in traffic safety, aesthetics, and/or property values, while not insignificant, have never been held to be compelling,¹³ and any such purported interest is belied by the fact that the Town Sign Ordinance permits larger and permanent non-political signs.

43. The Town Sign Ordinance’s apparent ban on the display of signs that relate to political matters, with or without a permit, while at the same time permitting and in certain cases exempting signs relating to various business, public, or other purposes, amounts to a prior restraint on signs expressing political views and constitutes content-based discrimination.

44. The First Amendment’s hostility to content-based regulation of speech extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.¹⁴

45. As a general matter, “the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”¹⁵

¹¹ *Whitton v. City of Gladstone*, 54 F.3d 1400, 1408 (8th Cir. 1995)(quoting *Ward v. Rock Against Racism*, 491 U.S. 781,798 n.6 (1989)).

¹² *McGuire v. Reilly*, 260 F.3d 36, 443 (1st Cir. 2001).

¹³ *Whitton*, 54 F.3d at 1408 (“[A] municipality’s asserted interests in traffic safety and aesthetics, while significant, have never been held to be compelling.”); *King Enterprises, Inc. v. Thomas Township*, 215 F. Supp. 2d 891, 911 (E.D. Mich. 2002) (“Although ‘safety’ and ‘aesthetics’ are substantial government interests, they are not compelling enough to justify content-based restriction on fully-protected, noncommercial speech.”)(citing *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 507-508, 514-515 (1981)); *Curry v. Prince George’s County*, 33 F. Supp. 2d 447, 452 (D.Md. 1999) (“Again, while recognizing aesthetics and traffic safety to be significant government interests, none of these courts found those interests sufficiently compelling to pass the applicable strict scrutiny test.”); *Keeler v. Mayor of Cumberland*, 940 F. Supp. 879, 886 (D. Md. 1996) (holding that interests in safeguarding historic heritage and fostering civic beauty are not compelling).

¹⁴ *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York*, 447 U.S. 530, 537 (1980).

¹⁵ *Id.*; *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972), and cases cited therein.

46. “To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.”¹⁶

47. Any restriction on expressive activity because of its content undercuts the “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”¹⁷

48. Because the Town Sign Ordinance bans the posting of political and social content signs with or without a permit, it impermissibly infringes on freedom of speech based on content and is therefore unconstitutional on its face.¹⁸

Prior Restraint

49. The Town Sign Ordinance bans political and social content signs from residential areas (*see* Sec. 405-IX.B.4 (describing the signs permitted in a residential area)) or requires prior Town approval and issuance of a permit (*see* Sec. 405-IX.B.2 (“Building Permit Requirement”)).

50. This is so because neither type of sign falls within the exemptions under Sec. B.3 (describing signs permitted without a permit in any district) or the signs permitted in residential zones under B.4.

51. In either case, the Town Sign Ordinance is unconstitutionally infirm, either as a content-based ban on certain political and social speech or as an unlawful prior restraint on speech.

¹⁶ *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 515 (1981)(quoting *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York*, 447 U.S. 530, 538 (1980)) (“With respect to noncommercial speech, the city may not choose the appropriate subjects for public discourse: ‘To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.’”).

¹⁷ *Mosley*, 408 U.S. at 96 (citation and quotations omitted).

¹⁸ *See Vono v. Lewis*, 594 F.Supp.2d 189, 203-205 (D.R.I. 2009) (Smith, J.)(Rhode Island Outdoor Advertising Act and implementing rules violated First Amendment since they imposed content-based restrictions on noncommercial speech and preferred commercial speech to noncommercial speech).

52. Restrictions that foreclose an entire medium of expression, even where content and viewpoint neutral, have been struck down as unconstitutional on numerous occasions because “the danger they pose to the freedom of speech is readily apparent by eliminating a common means of speaking.”¹⁹

53. “[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.”²⁰

54. Generally, there is a “heavy presumption” against the validity of a prior restraint.²¹

55. Licensing schemes impose a prior restraint on speech insofar as they entail a ban on speech “at least for the time.”²²

56. A prior restraint must be content neutral, the “decision whether or not to grant” a permit “must be made within a specified, brief period,” and cannot provide unbridled discretion to a government official.²³

57. A licensing or permitting “scheme that fails to set reasonable time limits on the decision-maker creates the risk of indefinitely suppressing permissible speech,” and is therefore constitutionally impermissible.²⁴

¹⁹ *City of Ladue*, 521 U.S. at 55, and cases cited therein.

²⁰ *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976).

²¹ *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963); see also *Thomas v. Chicago Park District*, 534 U.S. 316, 320 (2002) (The First Amendment “prohibits a wide assortment of government restraints upon expression, but the core abuse against which it was directed was the scheme of licensing laws implemented by the monarch and Parliament to contain the ‘evils’ of the printing press in 16th-and 17[th]-century England.”).

²² See *Neb. Press Ass'n*, 427 U.S. at 559 (“If it can be said that a threat of criminal or civil sanctions after publication ‘chills’ speech, prior restraint ‘freezes’ it at least for the time.”) (citing Alexander Bickel, *The Morality of Consent* 61 (1975) (“Even if they are ultimately lifted they cause irremediable loss—a loss in the immediacy, the impact, of speech.... A criminal statute chills, prior restraints freeze.”)); *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”).

²³ See *Int'l Outdoor, Inc. v. City of Troy, Michigan*, 974 F.3d 690, 698 (6th Cir. 2020).

²⁴ See *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 227 (1990) (plurality opinion).

58. To satisfy this requirement, an ordinance must contain two procedural safeguards: (1) a requirement that permitting decisions are made within a specified time period,²⁵ and (2) the availability of prompt judicial review to correct erroneous denials.²⁶

59. A valid prior restraint also may not place “unbridled discretion” in the hands of a government official.²⁷

60. A prior restraint that fails to place limits on the time frame within which a license or permit decision must be made is an unconstitutional impairment of freedom of speech.²⁸

61. The Town Sign Ordinance does not provide any time frame within which an application for a sign permit or special use permit must be determined.

62. The only judicial appeal from a denial of a permit under the Town Sign Ordinance, if any, is pursuant to R.I. Gen. Laws § 45-24-69, which does not provide any limitation on the time frame within which a judicial determination must be made.

63. The Town Sign Ordinance does not provide any guidelines or criteria which must be followed and applied by a Building Inspector in making a determination as to whether or not to grant a sign permit.

²⁵ See *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 226-27 (1990) (plurality opinion) (citing *Freedman v. Maryland*, 380 U.S. 51, 59 (1965)).

²⁶ *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358, 1362-63 (11th Cir. 1999)(citation omitted); see also *Freedman v. Maryland*, 380 U.S. 51, 58-59.

²⁷ See *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 225-26 (1990) (plurality opinion)(quoting *City of Lakewood*, 486 U.S. at 757); see also *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358, 1361 (11th Cir.1999) (“licensing schemes commonly contain two defects: discretion and the opportunity for delay”).

²⁸ See *Freedman v. Maryland*, 380 U.S. 51, 58-59 (1965) (holding that, when private speech requires a prior license from a government agency, this license must either be issued or denied “within a specified brief period”); *Lusk v. Village of Cold Spring*, 475 F.3d 480, 487 (2nd Cir. 2007) (invalidating ordinance regulating signs on prior restraint grounds due to failure to provide for timely issuance of sign permit); see also *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 226 (1990) (“[A] prior restraint that fails to place limits on the time within which the decisionmaker must issue the license is impermissible.”); *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 771-72 (1988) (“[W]e cannot agree that newspaper publishers can wait indefinitely for a permit only because there will always be news to report.... [A] paper needs public access at a particular time; eventual access would come ‘too little and too late.’ ”)(quoting *Freedman*, 380 U.S. at 57)).

64. Accordingly, the Town Sign Ordinance either imposes an unconstitutional content-based ban on political and social content signs or constitutes an invalid prior restraint in violation of the Plaintiff's right to freedom of expression.²⁹

E. Intentional Conduct

65. At all relevant times, Defendants acted intentionally, willfully, maliciously, and/or with reckless or callous indifference to Plaintiff's clearly established constitutional rights. Furthermore, at all relevant times, Defendants knew or should have known that their conduct would cause or contribute to the deprivation of Plaintiff's clearly established civil rights.

66. At all relevant times, Defendants were motivated by malice, wantonness and/or willfulness of such an extreme nature as to amount to criminality.

F. Restrictions on Plaintiff's Free Speech

67. Plaintiff's right to freedom of expression was and continues to be substantially damaged and curtailed as a result of the conduct of Defendants, specifically the impairment of his ability to communicate his political complaints to potential voters and members of the public generally.

68. Plaintiff would like and intends to erect and display signs at locations within the Town, to communicate, among other things, his criticism of government conduct, his political complaints about members of public office in the Town, and/or his opposition to or support of various issues.

69. Nevertheless, Plaintiff is reluctant to expend time and money to erect and display his signs within the Town, insofar as he faces potential prosecution and the imposition of

²⁹ *Lusk v. Village of Cold Spring*, 475 F.3d 480, 492 (2nd Cir. 2007) ("Where, as here, a property owner wishes to take a public position on a pressing public issue, for example, or on the qualifications of a candidate for public office in an imminent election, the time required to obtain approval may prevent the property owner from doing so until after the public issue is settled or the election is over. Such belated approval is of little consolation to Lusk and those like him in this regard, and of little use to their neighbors or the political process.").

monetary penalties under the Town Sign Ordinance as well as the expenditure of additional time and money should he be cited for purportedly violating the ordinance and ordered to remove any signs erected.

G. Irreparable Harm and Damages

70. The Defendants' foregoing acts and/or omissions constitute a violation of the Plaintiff's right to freedom of speech protected under the First and Fourteenth Amendments to the United States Constitution and Article 1, § 21 of the Rhode Island Constitution.

71. The Defendants' actions have placed Plaintiff in the position of either refraining from constitutionally protected conduct or facing prosecution and the potential imposition of substantial monetary fines.

72. That, as a direct and proximate result of the Defendants' acts and/or omissions, including, but not limited to, those described herein, the Plaintiff has suffered and will continue to suffer deprivation of his First Amendment freedom of expression rights, and has thereby sustained and will continue to sustain irreparable harm.³⁰

73. That, as a direct and proximate result of the Defendants' acts and/or omissions, including, but not limited to, those described herein, the Plaintiff has suffered and will continue to suffer mental anguish, pain and suffering, impairment of his freedom of expression rights, deprivation of his civil rights, expenses for legal services, and other great damage.³¹

³⁰ *Elrod v. Burns*, 427 U.S. 347, 373 (1976)(even temporary deprivation of First Amendment freedom of expression rights is sufficient to establish irreparable harm); *see also Citizens for a Better Environment v. City of Park Ridge*, 567 F.2d 689, 691 (7th Cir. 1975).

³¹ *Carey v. Piphus*, 435 U.S. 247, 266-267 and n. 24 and n. 25 (1978).

VI. Claims for Relief

74. Plaintiff incorporates in the counts below the allegations contained in ¶¶1 through 73 above.

COUNT ONE

Impairment of Freedom of Speech in Violation of 42 U.S.C. § 1983

75. Defendants, acting under the color of state law, by their acts and/or omissions, including but not limited to those described herein, have deprived Plaintiff of and placed unlawful restrictions on his freedom of expression in violation of Plaintiff's right to freedom of speech, causing Plaintiff to suffer harm as aforesaid, and have thereby deprived Plaintiff of rights secured under the First and Fourteenth Amendments to the United States Constitution, actionable pursuant to 42 U.S.C. § 1983.

COUNT TWO

Impairment of Freedom of Speech in Violation of Article 1, § 21 of the Rhode Island Constitution

76. Defendants, acting under the color of state law, by their acts and/or omissions, including but not limited to those described herein, have deprived Plaintiff of and placed unlawful restrictions on his freedom of expression in violation of Plaintiff's right to freedom of speech, causing Plaintiff to suffer harm as aforesaid, and have thereby deprived Plaintiff of rights secured under Article 1, § 21 of the Rhode Island Constitution.

VII. Prayers for Relief

WHEREFORE, Plaintiff prays that this Court grant the following relief:

1. A temporary restraining order and preliminary and permanent injunctions restraining and enjoining Defendants from interfering with the exercise of the Plaintiff's right to freedom of speech guaranteed by the First and Fourteenth Amendments to the United States Constitution and Article 1, § 21 of the Rhode Island Constitution.

2. A declaratory judgment that the Defendants, in the manner described herein, violated the First and Fourteenth Amendments to the United States Constitution and Article 1, § 21 of the Rhode Island Constitution by placing impermissible restrictions on Plaintiff's right to freedom of speech.

3. An award of compensatory damages.

4. An award of punitive damages.

5. An award of reasonable attorney's fees and costs of litigation to Plaintiff pursuant to 42 U.S.C. § 1988.

6. Such other and further relief as this Court deems just and proper.

VIII. Demand for Jury Trial

Plaintiff hereby demands a trial by jury on all counts so triable.

IX. Designation of Trial Counsel

Plaintiff hereby designates Richard A. Sinapi, Esquire, as trial counsel.

Plaintiff, **Michael DiPaola**
By his attorneys,

Date: January 21, 2021

/s/ Richard A. Sinapi
Richard A. Sinapi, Esq. (#2977)
American Civil Liberties Union Foundation of
Rhode Island
Sinapi Law Associates, Ltd.
2374 Post Road, Suite 201
Warwick, RI 02886
Phone: (401) 739-9690
FAX: (401) 739-9040
Email: ras@sinapilaw.com

VERIFICATION OF COMPLAINT

Now comes the Plaintiff, **Michael DiPaola**, being duly sworn, and does hereby depose and say as follows:

1. That I am the Plaintiff in the within matter.
2. That I have read the above Complaint and acknowledge the factual allegations alleged therein to be true and accurate to the best of my knowledge, information, and belief.
3. That I have made this **Verification of Complaint** in support of my prayers therein for judgment and relief against the Defendants.



Michael DiPaola

Subscribed and sworn to before me in **Warwick** on this 21 day of **January, 2021**.



(name) Richard A. Sinapi

NOTARY PUBLIC

My Commission Expires: 6/22/21

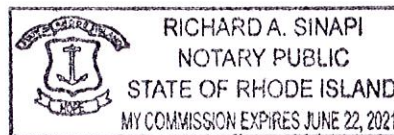


EXHIBIT A



OFFICIALS
VIOLATE
CODE OF
ETHICS
COVER UP
CONFLICT
WORKS 4
CONTRACTOR
—FOR SALE—

ENFOR
CODES /
ZONING



EXHIBIT B



Town of Portsmouth

2200 East Main Road / Portsmouth, Rhode Island 02871

www.portsmouthri.com

GARY R. CROSBY
Town Planner

Office: (401) 643-0332
Fax: (401) 683-6804
email: gcrosby@portsmouthri.com

January 14, 2021

Mr. Michael DiPaola
40 Colonel Barton Drive
Portsmouth, Rhode Island 02871

Re: NOTICE OF VIOLATION – 184 Bristol Ferry Road, Plat 23, Lot 7

According to the tax records of the Town of Portsmouth, you are the owner of Plat 23, Lot 7 at 184 Bristol Ferry Road. This office has received a copy of a Portsmouth Police Department Field Interview Report indicating you have erected three (3) signs of various sizes facing the roadway in the front yard of your property. Upon recent investigation, I find the number of signs erected on your property has increased to nine (9).

Be advised, the erection of these signs on your property at 184 Bristol Ferry Road is a violation of multiple sections of Article IX of the Portsmouth Zoning Ordinance, detailed as follows:

Section B (2) of the Article states no sign shall be erected, installed, displayed, kept, modified, repaired, placed or replaced unless a building permit is issued therefore. A search of Town records indicates no building permit has been issued to you to erect these signs.

Section B (3) of the Article provides for a variety of signs permitted in any Zoning District. The signs you have erected on your property do not meet any of the permitted signs criteria and are therefore prohibited by the ordinance.

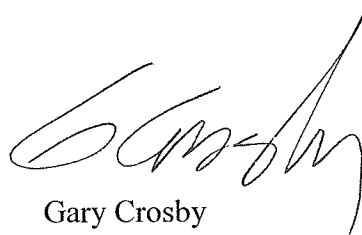
Section B (4) of the Article provides for a variety of signs permitted in Residential Districts. The signs you have erected on your property do not meet any of the permitted signs criteria and are therefore prohibited by the ordinance.

Section B (7)(g) of the Article prohibits sign which “distract the vision of drivers” or which “interfere with, mislead or confuse traffic.”

Accordingly, I hereby direct you to take steps to bring your property into compliance with the Portsmouth Zoning Ordinance by removing all signs in violation of Article IX of the ordinance within seven (7) days of receipt of this notice or legal action will be taken against you in the form of a summons to Municipal Court.

Be advised, every person convicted of a violation of this ordinance may be punished by a fine of not more than five hundred (\$500) dollars for each offense, in this case for each individual prohibited sign, and each day of the existence of any such violation shall be deemed a separate offense.

You have the right to appeal this decision per Article XIV, Sec. B. of the Portsmouth Zoning Ordinance. Appeals take place in public hearing before the Zoning Board of Review and are preceded by advertisement in the newspaper and written notification of the abutters.

A handwritten signature in black ink, appearing to read 'Gary Crosby', is positioned above the printed name and title.

Gary Crosby
Acting Zoning Enforcement Officer

EXHIBIT C

Section B. Signs.

1. Definitions. Unless otherwise expressly stated in this Ordinance, the following definitions shall apply to this section:
 - a) Announcement or Bulletin Board — Signs containing written or printed notices for public, fraternal, charitable, civic or religious institutions that contain no commercial advertising.
 - b) Billboard — An outdoor sign advertising products or services not made, sold, used or served on the premises on which the sign is located.
 - c) Erect — To build, construct, attach, hang, place, suspend or affix a sign, or to paint a wall sign or to do anything else which causes a sign to be visible to the general public.
 - d) Frontage - Building — The length of a building, at ground level, that faces a public street or parking area.
 - e) Frontage - Street — The distance, measured along a straight line connecting the point of intersection of the side lot lines with a public street.
 - f) Sign — Any object, device, or structure, or part thereof, situated outdoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images. Excluded from this definition are the actual products or merchandise being marketed, and pavement markings or driveway directional arrows painted on the ground that contain no advertising.
 - g) Sign Area — The area of a sign is the total area within a line circumscribing all surfaces or structures used or employed or designated for use as a sign or for sign purposes including spaces between or within letters and/or pictorial matter, slates and panels.
 - (1) Spaces between major supports or frames required for clearance between sign and ground shall be excluded. Frames and structural members that do not meet the definition of a sign shall not be included in the computation of sign area.

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- (2) All visible faces of a multi-faced sign shall be counted separately and then totaled in calculating sign area, except that on dual-faced signs where the two (2) faces are parallel and opposite, only one (1) side shall be counted. Three (3) dimensional signs shall be treated as dual-faced and the total area shall be two (2) times the area of the line circumscribing all surfaces or structures used or employed or designated in the plane of the largest dimension.
- h) Sign, Freestanding — A sign supported by a pole, uprights, braces or frame or similar device on the ground and not supported by any walls, building or similar structure.
 - i) Sign Height — The height of a sign shall be the vertical distance measured from the ground at the base of the sign to the highest point of any portion of the sign or supporting structure.
 - j) Sign, Illuminated — A sign illuminated with an artificial light directed from an exterior source or illuminated from within as an integral part of the construction of the sign, including neon signs.
 - k) Sign, Off-Site Directional — Any sign giving directions to the location of any use or activity not located upon the property upon which the sign is erected, and which may contain only the name of the use and necessary information giving directions to the use; provided however that no advertising shall be contained in such sign.
 - l) Sign, Portable — Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to: signs designed to be transported by means of wheels; signs converted to A or T-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising; satellite dishes which display advertising; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.
 - m) Sign, Projecting — A sign erected so as to project approximately perpendicular from the exterior of any building or wall.

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- n) Sign, Roof Mounted — A sign placed upon the roof of any building or portion thereof, or erected on a vertical framework supported by the roof of a building.
- o) Sign, Wall-Mounted — A sign erected against, painted on or attached to the wall of any building or structure (except a freestanding sign support) including by illustration and not limitation, signs affixed to fences, screens and freestanding walls.
- p) Sight Distance Triangle — The land adjoining a street intersection that is kept clear of obstructions between three (3') and seven feet (7') above the ground to protect the visibility and safety of motorists and pedestrians. The protected sight distance area is the triangle with legs that are the intersecting flowlines of two (2) streets at an intersection. The legs shall extend thirty-five feet (35') away from the intersection of the flowlines.

2. Building permit required/safety and materials.

- a) Except as provided herein, no sign shall be erected, installed, displayed, kept, modified, repaired, placed or replaced unless a building permit is issued therefor.
- b) No provision of this Ordinance shall be construed to prohibit the painting, repainting, varnishing, etc. of a lawfully existing sign. No provision of this Ordinance shall be construed to prevent the building inspector from issuing a permit for the repair, replacement or resurfacing of any preexisting, nonconforming sign, lawfully existing on the 23rd day of October, 1989, provided that there is no change in the height, location, or shape of said sign or increase in sign area (unless the change in the shape of the sign is due to a decrease in sign area, in which case change in the shape of said sign is permissible).
- c) The Building Inspector may require the following information to be submitted along with the application for a building permit:
 - (1) Name, address and telephone number of the applicant.
 - (2) A drawing of the proposed sign, giving dimensions, colors, materials and details about the proposed lighting.

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- (3) A drawing of the building or lot showing where the proposed sign is to be located in relation to the building, property lines and streets, including heights.
 - (4) A drawing of the plans and specifications and details of the method of construction and attachment to the building or in the ground.
 - (5) Any electrical permit required and issued for said sign.
 - (6) Written consent of the owner of the building, structure or land to which or on which the sign is to be erected.
- d) Every sign and all parts thereof, including without limitation, the framework, supports, background wiring systems and anchors shall be constructed and maintained in compliance with all applicable building, electrical and fire prevention codes. All signs and parts thereof shall be kept in good repair.
3. Permitted signs in any zoning district. The following signs are permitted in any Zoning District. No sign shall be higher or wider than four feet (4') exclusive of framework:
- a) One (1) sign, no greater than one and one-half square feet (1 1/2 ft.²) in area displaying the name and address of the occupant and/or identifying a permitted or accessory use.
 - b) Announcement or bulletin boards provided they are erected for a period not to exceed two (2) weeks in conjunction with advertisement of an upcoming event. No more than two (2) such signs shall be permitted for any event and the total combined sign area for all signs for any one event shall not exceed thirty-two square feet (32 ft.²).
 - c) Temporary "For Sale" or "For Rent" signs no greater than six square feet (6 ft.²) in area in a residential zone and no greater than twelve square feet (12 ft.²) in area in any other zone that advertises the sale, lease, rental, etc. of real property upon which the sign is located. These signs shall not be illuminated.
 - d) Traffic signs or signs erected by a public or municipal agency in discharge of its governmental functions.
 - e) Instructional or directional signs, identifying on-premise traffic, parking or other functional activity, such as lavatory facilities, telephone, sections of a building, entrances, offices,

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etc. bearing no commercial advertising. Each sign shall not exceed two square feet (2 ft.²) in area.

- f) Accessory signs incidental to a business or a profession conducted on the premises indicating hours of operation, credit cards, business affiliations, and the like, provided the total area does not exceed two square feet (2 ft.²); and accessory signs such as no trespassing, or other such signs regulating the use of the property upon which it is located, of no more than two square feet (2 ft.²) in area per sign.
 - g) Any public notice or warning required by a valid and applicable federal, state or local law, regulation or ordinance.
4. Signs permitted in Residential and Open Space Districts.
- a) The following signs are permitted in Residential and Open Space Districts:
 - (1) All signs permitted under Paragraph 3 above.
 - (2) One sign, no greater than twelve square feet (12 ft.²) in area, identifying a legally maintained nonconforming use. The location of such signs shall comply with the side yard setback provisions of the Land Space Requirements Table in Article III. for the zoning district in which it is located. Such sign shall be placed no closer than ten feet (10') from the front lot line and shall not project above the height of any principal building. The overall height of a freestanding sign in these districts shall not exceed ten feet (10').
 - (3) One sign, no greater than twelve square feet (12 ft.²) in area, identifying a use permitted by special use permit or use granted by variance proceeding. The location of such signs shall comply with the side yard setback provisions of the Land Space Requirements Table in Article III. for the zoning district in which it is located. **[Amended 8-15-1994¹]**
 - (4) Permanent signs at major entrances to residential developments or open space entrances designed only to identify such developments or spaces and do not exceed twelve square feet (12 ft.²) in area.

1. Note: Change ARTICLE IX, Specific Development Regulations Section B.4.a)(3) and Section B.6., the wording, from "special exception" to "special use permit" or any place it may appear.

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- b) Signs in these districts shall be lighted only by continuous, external white light.
5. Signs permitted in Commercial, Industrial and Waterfront Districts. The following signs are permitted in Commercial, Industrial and Waterfront Districts:
- a) On lots having one (1) establishment: On any lot upon which is located only one (1) establishment, the following signs shall be permitted:
 - (1) One freestanding sign, not to exceed fifteen feet (15') in overall height including the space clearance between the ground and the sign. The maximum area of said signs shall be equal to or less than one square foot (1 ft.²) of sign area for each five lineal feet (5') of street frontage of said lot, not to exceed thirty-two square feet (32 ft.²). In instances where a lot fronts on more than one (1) street, only the frontage on one (1) street may be used for calculating sign area. That frontage shall be the frontage upon which the signs are located.
 - (2) One (1) wall mounted sign, one (1) roof-mounted sign or one (1) projecting sign. The maximum area of a wall-mounted sign shall be equal to or less than one square foot (1 ft.²) for each two lineal feet (2') of building frontage on which the signs are attached, not to exceed fifty square feet (50 ft.²), provided that the sign shall not extend beyond the top or side of the wall to which it is attached. The maximum area of a roof-mounted or projecting sign shall not exceed twelve square feet (12 ft.²). The base of all projecting signs shall be no less than eight feet (8') above the ground. Projecting signs shall not project more than four feet (4') from the exterior wall of the building. Roof mounted signs shall not extend above the peak of the roofline of the roof upon which it is mounted or be attached in any way which would increase the overall height of the structure on which is located.
 - b) On lots having multiple establishments: On any lot upon which is located more than one (1) establishment the following signs shall be permitted:
 - (1) One (1) freestanding sign per lot not to exceed fifteen feet (15') in overall height including the space clearance between the ground and the sign. The maximum area of said sign shall be equal to or less than one square foot (1

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ft.²) of sign area for each five lineal feet (5') of street frontage of said lot, not to exceed thirty-two square feet (32 ft.²). In instances where a lot fronts on more than one (1) street, only the frontage on one (1) street may be used for calculating sign area. That frontage shall be the frontage upon which the sign is located. and:

- (2) One (1) wall mounted sign, one (1) roof mounted sign or one (1) projecting sign per establishment. The maximum area of any wall mounted sign shall be equal to or less than one square foot (1 ft.²) for each two lineal feet (2') of building frontage on which the sign is attached divided by the number of establishments having signs on said wall, up to a maximum of forty square feet (40 ft.²), provided that said sign shall not extend beyond the top or side of the wall to which it is affixed. The maximum area of a roof mounted or projecting sign shall not exceed twelve square feet (12 ft.²). The base of all projecting signs shall be no less than eight feet (8') above the ground. Projecting signs shall not project more than four feet (4') from the exterior wall of the building. Roof mounted signs shall not extend above the peak of the roofline of the roof upon which it is mounted or be attached in any way which would increase the overall height of the structure on which is located. (NOTE: It is not clear if this applies to each sign or all signs in total.)
- c) Common signage plans. If the owner or owners of a lot with three (3) or more establishments file with the Building inspector a common signage plan conforming with the provisions below, a twenty-five percent (25%) increase in the area of each freestanding or wall mounted sign shall be allowed.
- (1) The Common Signage Plan shall contain all information required by paragraph 2.c) above, with the exception of paragraph 2.c)(1), and specify standards for consistency among all signs on the lot with regard to color scheme, lettering or graphic style, lighting, location on buildings, material and sign proportions.
 - (2) There shall be only one (1) freestanding sign for each lot regardless of number of establishments and the common signage plan shall provide for sale or shared usage of said sign.

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- (3) The Common Signage Plan shall be signed by all owners or their authorized agents in such form as the building inspector shall require.
 - (4) A Common Signage Plan shall be included in any development plan, site plan, planned unit development plan, or other official plan required by the Town for any proposed development including those plans required to be filed pursuant to Article VII, Section G. of this ordinance and shall be processed simultaneously with that plan.
 - (5) A Common Signage Plan may be amended by filing a new Common Signage Plan that conforms with all requirements of the ordinance then in effect.
 - (6) After approval a Common Signage Plan, no sign shall be erected placed, painted, or maintained, except in conformance with such plan, and such plan shall be enforced in the same way as any provision of this ordinance. In case of any conflict between the provisions of such a plan and any other provision of this ordinance, the ordinance shall control.
- d) All signs permitted under paragraphs 3 and 4 above.
6. Signs permitted by special use permit. The following signs may be permitted as a special use permit by the Zoning Board of Review:
- a) Off-site directional signs where the location of a use requires such signs in order to avoid confusion, traffic congestion or similar inconveniences, and to facilitate travel to such location. The Zoning Board of Review may permit signs as are reasonably necessary to accomplish these objectives, but no more than two (2) such signs shall be permitted for any one (1) use. The area of any such sign shall be no more than four square feet (4 ft.²) and in all cases the minimum number of signs and size necessary to accomplish any of these objectives shall be authorized. The Zoning Board shall only grant the minimum relief necessary to effect the purposes of this section.
 - b) Signs, which by their content, design, shape or construction, are representations of a trademark, logogram or symbol employed in the advertising of any industrial use. No more than one (1) such sign shall be permitted for each such use, and may be permitted only in industrial zoning districts. The

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area of any such sign may not exceed forty square feet (40 ft.²). Such sign shall only be wall-mounted, may be illuminated and shall be in addition to any permitted signs. The Zoning Board shall only grant the minimum relief necessary to effect the purposes of this section.

- c) Any sign not in conformance with the provisions of this ordinance in regards to permitted number of signs, sign area, height, or location only, provided that no relief from this ordinance may be granted to allow the lawful erection or maintenance of signs prohibited by Paragraph 7 hereof.
7. Signs prohibited in all districts. The following signs are prohibited and shall not be erected or maintained in any district:
- a) Billboards or off premise signs ([except as permitted under paragraph 6. a]).
 - b) Signs which incorporate in any manner any flashing, moving or oscillating illumination or illumination which varies in color, or signs with audible sounds.
 - c) Signs which have visible moving parts, including signs which achieve movement by action of wind currents.
 - d) Projecting signs with internal illumination.
 - e) Obsolete signs or obsolete supporting structures which no longer advertise the bone fide business or use conducted on the premises.
 - f) Signs or supporting structures which constitute a hazard to public safety or health.
 - g) Signs which by reason of size, location, content, coloring or manner of illumination, obstruct, hinder or distract the vision of drivers or obstruct or detract from the visibility or effectiveness of any traffic sign or control device on public streets and roads or which interfere with, mislead or confuse traffic.
 - h) Searchlights, pennants, spinners, banners and streamers.
 - i) Portable signs and trailer signs.
8. General provisions
- a) No sign shall extend onto or over a public right-of-way without prior approval by the Town Council. The Town

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Council shall require the applicant to maintain sufficient insurance coverage to protect both the Town and the applicant from all claims from personal injuries which may arise from said sign.

- b) Nothing in this section shall be interpreted as authorization for or approval of the continuation of the use of signs in violation of any ordinance in effect at the time of the passage of this section.
 - c) No sign shall be erected or placed within the sight distance triangle defined in paragraph 1 herein which obstructs the visibility of a motorist entering or leaving such establishment in the space between three feet (3') and seven feet (7') above the ground.
9. Signs exempt from permit requirement. No permit shall be required for signs defined in Subparagraphs a), b), d), e), f) and g) of paragraph 3 herein, provided said signs otherwise comply with the provision of this ordinance.
10. Administration and enforcement. The Town Building Inspector shall have the responsibility and authority for:
- a) Determining conformance with this article for all proposed and presently existing signs.
 - b) Issuing a permit for all signs which comply with this ordinance.
 - c) Issuing notice to any owner of a nonconforming or prohibited sign or owner of land on which a prohibited sign exists that they are in violation of this ordinance and to supply to said person a copy of this ordinance.
 - d) Inventorying all signs presently in the Town.
 - e) Determining compliance with the state building and safety codes and conducting periodic inspections of existing signs to ensure the safety and continued compliance with state building and safety codes.
 - f) Removing prohibited signs which are unsafe or unlawful as defined under the state building code or signs determined to be prohibited or not in compliance with this chapter.