



May 5, 2023

Via Email

Lori Wilshire
President, Board of Aldermen
City Hall
229 Main Street
Nashua, NH 03060

RE: Civility Ordinance

Dear President Wilshire:

I write on behalf of the American Civil Liberties Union of New Hampshire (“ACLU-NH”) and the New England First Amendment Coalition (“NEFAC”). ACLU-NH engages in litigation to encourage the protection of individual rights guaranteed under the United States and New Hampshire Constitutions, as well as under our state and federal civil rights laws. NEFAC is the region’s leading advocate for First Amendment freedoms and the public’s right to know about government. The coalition is a non-partisan non-profit organization that believes in the power of transparency in a democratic society. Its members include lawyers, journalists, historians, academics, and other private citizens.

We write to express our concerns with a recently-enacted ordinance, O-22-024, which was adopted September 14, 2022 at the Board of Alderman meeting. This ordinance, which provides that at Board of Alderman meetings, “Crude, vulgar, profane and/or obscene remarks are prohibited,” violates Part I, Article 32 of the New Hampshire Constitution which protects the right of New Hampshire citizens to peaceably assemble to petition their elected representatives.

In March of this year, the Massachusetts Supreme Judicial Court found unconstitutional a similar “civility code” under the Massachusetts Declaration of Rights. *Barron v. Kolenda*, 291 Mass. 408, 418 (2023). In pertinent part, the code in question required that “All remarks and dialogue in public meetings must be respectful and courteous, free of rude, personal or slanderous remarks. Inappropriate language and/or shouting will not be tolerated” at meetings of the Southborough board of selectmen. Noting that the Massachusetts Declaration of Rights provided that “The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body ... redress of the wrongs done to them,” the Court observed that “‘peaceable and orderly’ is not the same as ‘respectful and courteous’” and that “[t]here was nothing respectful or courteous about the public assemblies of the revolutionary period.” *Id.* The Court then held that the content sought to be prohibited—“discourteous, rude, disrespectful, or personal speech about



government officials and governmental actions”—was clearly protected and thus the prohibition was impermissible.

Part I, Article 32 of the New Hampshire Constitution is nearly identical to the provision of the Massachusetts Declaration of Rights at issue in *Barron*, and the New Hampshire Supreme Court gives special deference to decisions of the Supreme Judicial Court that interpret identical provisions. *See In re Juvenile*, 2003-195, 150 N.H. 644, 652 (2004) (“Because the language of the . . . [c]lause is identical, and given the shared history of our state constitutions, we again give weight to the Massachusetts Court’s interpretation of an identical provision.”).

This is not to say that the City is completely unable to regulate public comment at Board of Alderman meetings. It is likely permissible to designate when in a meeting public comment is allowed, to set time limits for speakers, and to set rules preventing speakers from disrupting others. Moreover, the City can require speech be “orderly and peaceable.” But it cannot constitutionally prohibit speech that is crude, vulgar, uncivil, or profane.

In conclusion, we demand that the City repeal ordinance O-22-024 or we will consult with our coalition partners to determine our next steps.

Sincerely,

/s/ Henry Klementowicz
Henry Klementowicz
ACLU-NH Senior Staff Attorney

Cc: Steve Bolton, Corporation Counsel