



Delaware

100 W. 10th Street
Suite 706
Wilmington, DE 19801
(302) 654-5326
aclu-de.org

Ariel Gruswitz
President

Mike Brickner
Executive Director

Dwayne Bensing
Legal Director

Javonne Rich
Policy & Advocacy
Director

August 20, 2025

Dear Ocean View Town Council:

The ACLU of Delaware has been made aware of an Ocean View Ordinance passed on July 8, 2025, that imposes unconstitutional and unreasonable time, place, and manner restrictions upon community organizers and protesters.¹ Our hope is that Ocean View (“The Town”) ceases to unconstitutionally limit protected speech in public spaces. We ask that Ocean View swiftly repeal the Ordinance.

Background

On July 8, 2025, Ocean View Town Council voted to regulate the time, place, and manner of First Amendment assemblies in The Town (“The Ordinance”). The Ordinance requires community organizers to apply for a permit before an event with ten or more people, pay up to \$150 and possibly more in fees, and be subject to restrictions created at the Town Manager’s discretion. The Ordinance further restricts community organizers to hold “First Amendment Assemblies” between the hours of 8:00 AM and 8:00 PM and prohibits wearing masks. Such restrictions on speech in a public forum are unreasonable, and thus, unconstitutional.

Time, Place, and Manner Restrictions

In traditional public forums, the state may “enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.”² Permitting schemes in traditional public forums are considered prior restraints on speech and are subject to these constitutional standards.³

The 36-Hour Notice Requirement

The 36-hour notice requirement without any exceptions serves no purpose other than to impermissibly burden spontaneous speech.⁴ “[A]ll advance

¹ [Town of Ocean View - Council Meeting 7/8/2025 - YouTube](#); [Town Ordinance No. 405](#)

² *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 45 (1983) (internal citations omitted).

³ *Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 130 (1992) (finding that a county ordinance requiring a permit and a fee before authorizing public speaking, parades, or assemblies in a public forum “must meet certain constitutional requirements”) (internal citations omitted).

⁴ See *Rosen v. Port of Portland*, 641 F.2d 1243, 1249 (9th Cir. 1981) (“Advance notice or registration requirements drastically burden free speech. They stifle spontaneous expression. They prevent speech that is intended to deal with

notice requirements tend to inhibit speech.”⁵ First Amendment activity is often in the form of nearly-spontaneous collective action, such as a protest or march in response to a recent occurrence. Even if there were sufficient traffic and safety concerns that could justify a permit requirement for some of the protests Ocean View is contemplating, The Town would be required to provide exceptions for protesters who wish to respond to current events. To “comport with the First Amendment, a permitting ordinance must provide some alternative for expression concerning fast-breaking events.”⁶ Although the 36-hour notice requirement may be short enough to be reasonable for some events, by mandating it for *all* possible First Amendment activities, The Ordinance’s notice requirement is overbroad.

The Fees

Although permitting fees on First Amendment activity are not unconstitutional *per se*, Ocean View’s fees impermissibly and unconstitutionally burden substantially more speech than is reasonable. Ocean View’s event usage fees include \$100 for assemblies of fifty (50) or less, and at least \$150 for assemblies of fifty (50) or more. These fees can be higher at the sole discretion of the Town Manager. This is an unconstitutionally burdensome (and vague) amount.

First, because many non-profit and volunteer-based community groups hoping to gather in Ocean View to engage in First Amendment speech may struggle to pay such a large amount, the fee burdens more speech than necessary. Even if the amount of the fee is considered “nominal,” because there are no exceptions to the fee, it still “unconstitutionally burden[s] the free speech rights of those speakers too indigent to afford its payment.”⁷

In addition, The Ordinance allows The Town to charge an after-the-fact additional fee “to cover actual expenses related to security, traffic control, sanitation, and clean up.” Although the size of a fee can scale to the size of the proposed event to assure financial accountability for any damages caused, the size of the fee cannot be content-based.⁸ When expenses like security are considered, which necessarily requires The Town to examine how others might react to the speech planned, a requirement for reimbursement is necessarily content-based.⁹ “Although an applicant can plan for the level of participation by members of its organization, it simply cannot accurately anticipate the actions of others or the anticipated reaction of the police.”¹⁰ Such fees cast a chilling effect on speech that is *per se* unconstitutional.

Masking

Additionally, the Ordinance prohibits the wearing of masks or face coverings that “conceal identity.” The Ordinance prevents protesters from maintaining their anonymity while engaging in lawful, peaceful protest. This restriction violates longstanding U.S. Supreme Court precedent,

immediate issues.”); *see also Sullivan v. City of Augusta*, 511 F.3d 16, 38 (1st Cir. 2007) (“Notice periods restrict spontaneous free expression and assembly rights safeguarded in the First Amendment.”).

⁵ *N.A.A.C.P., W. Region v. City of Richmond*, 743 F.2d 1346, 1355 (9th Cir. 1984).

⁶ *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1047 (9th Cir. 2006).

⁷ *The Nationalist Movement v. City of York*, 481 F.3d 178, 184 (3d Cir. 2007).

⁸ *Id.*

⁹ *Id.* at 186.

¹⁰ *Id.*

which recognizes that privacy and anonymity is “indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.”¹¹ Preventing people from protesting without revealing their identities has a stark chilling effect. Those who seek to challenge policies that harm vulnerable communities may not speak because they are especially likely to be targeted for reprisal. Even absent a risk of harassment, “[t]he decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one’s privacy as possible.”¹² Although most of the time political rhetoric occurs out in the open with clearly identifiable speakers, there is a history and tradition dating back to the Federalist Papers of anonymous political rhetoric.¹³ Masking is simply a modern form of this traditional practice of anonymity that is protected by the First Amendment.

Ocean View’s restrictions are a blatant, facially unconstitutional implementation of a time, place, and manner restrictions because they chill speech, are not reasonable, and do not provide alternate channels of communication.

Conclusion

Those who enjoy public spaces in Ocean View retain their First Amendment rights when using the traditional public forums in The Town. The Town’s 36-hour notice requirement and fees along with the anti-masking requirement unconstitutionally suppress free speech and assembly rights protected by the First Amendment.

Please confirm receipt of this letter and that you intend to repeal the Ordinance immediately, but not later than your Town Council Meeting on October 14.

Thank you for your attention to this matter. As always, please do not hesitate to contact The ACLU of Delaware if we may be of assistance with this, or any other matter. We look forward to hearing from you soon.

/s/ Dwayne J. Bensing

Dwayne J. Bensing (#6754)

Legal Director

dbensing@aclu-de.org

/s/ Jared Silberglied

Jared Silberglied*

*Not admitted to practice in DE

Penn Catalyst Legal Fellow

jsilberglied@aclu-de.org

ACLU Delaware

100 W. 10th St. #706

¹¹ *Nat’l Ass’n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958).

¹² *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 341-42 (1995).

¹³ *Id.* at 342-43.a

Wilmington, DE 19801
(302) 295-2113