

# FIRST AMENDMENT AUDIT PROTOCOL

Massachusetts Council  
On Aging

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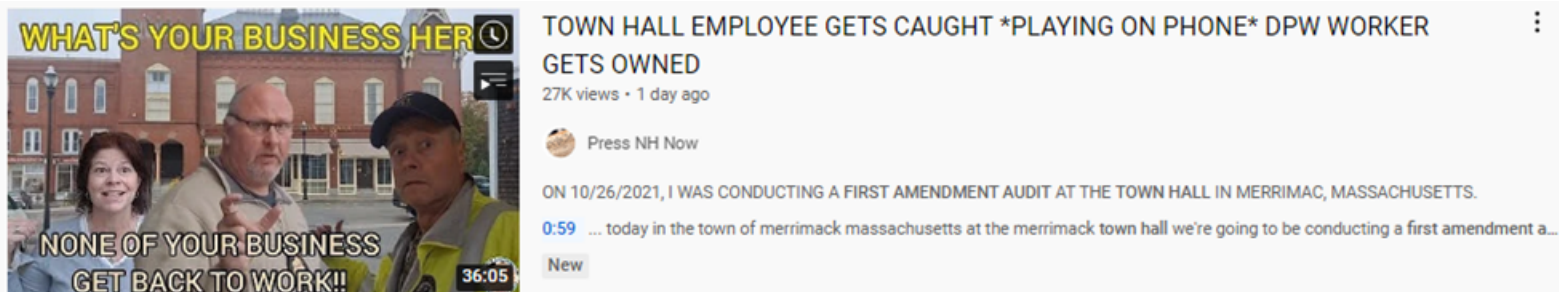
# Agenda

- Overview of First Amendment Audits
- Preparation for a First Amendment Audit
- How to Handle a First Amendment Audit
- What to do After a First Amendment Audit



# First Amendment Audits

- “Auditors” record interactions with public officials and post videos to the internet as a form of activism
- Typically conducted at police stations, city halls, town halls, and other public buildings
- Goal appears to be to provoke employees into unlawfully detaining or otherwise violating their First Amendment rights
- Can expose a municipality to serious liability (e.g., \$41,000 settlement in Colorado Springs for wrongful detainment of auditor filming outside of a police station)



# Are These Audits Legal?

- Yes – in Massachusetts the public is permitted record certain public officials in public places as they undertake official business
- If they are recording in a public area of Town Hall, City Hall, or another municipal building, they are permitted to be there
- Municipal employees should treat these people as they would any other member of the public



MAYOR FORGETS CITY HALL BELONGS TO THE PEOPLE! RANGER TRIES TO ESCALATE! GETS EDUCATED INSTEAD! FAIL

160K views • 2 weeks ago

Long Island Audit

I was conducting a 1st Amendment Audit at the City Hall in Lima, Ohio. I was confronted with several unprofessional & rude public ...

4K

# Preparation for a First Amendment Audit

- Review what is “public facing” in your office space
  - Ensure you will not inadvertently expose matters of personal privacy, documents subject to the attorney-client privilege, or documents subject to the exemptions to the Public Record Law
- Demarcate public and “employee only” areas
  - Remember, if you bring a member of the public into an “employees only” area you may have converted that area into a public space
  - If you do this with a different customer while a First Amendment auditor is present, you cannot bar the auditor from entering this previously private space as well
- Determine in advance who will provide service during a First Amendment Audit
  - Some employees may be more comfortable being taped or dealing with confrontational situations than others

# How to Handle a First Amendment Audit

## ■ #1 Rule: **Stay Calm**

- Remember, there is nothing interesting about a video of a municipal employee sitting at their desk, typing on their computer, and politely answering questions
- Most of these people are looking for arguments or confrontations
- Try to avoid being sarcastic, short, or defensive

## ■ Business as usual

- You need not do more or less than you would for any other member of the public
- Remember you are not required by the Public Record Law to answer questions (although customer service is, of course, a priority).
- If they ask for your name, answer politely
- Try to avoid immediately getting your department head, this is the type of footage they are looking for

# How to Handle a First Amendment Audit

- Be Mindful of the Needs of Other Customers
  - If other customers express discomfort about being around the First Amendment auditor, offer to speak with them by phone or invite them to come in another day
  - Consider posting the following message in the office:
    - “Be advised that in Massachusetts, persons may record certain public officials in public places as they undertake official business. If such a recording is being made, and you are uncomfortable, please feel free to call the office to address your issue, make an appointment, or come back at a different time. Thank you for your understanding!”
- However, if you do fear for your safety, please seek assistance from your department head, municipal executive, or the police department



# How to Handle a First Amendment Audit

- Public Record Requests
  - Offer the individual the opportunity to commit the request to writing
  - If they do not want to file it, write it up and date it yourself
  - If it is reasonable for you to provide the requested record at that time, then do so
  - If the request is large and will take time to analyze, ask the requestor to leave their contact information or ask them to follow up in five days
- Complaints about Employees
  - Follow the typical protocol by referring the individual to the relevant department head or municipal executive
  - You are not expected to resolve the complaint yourself!

## What to do After a First Amendment Audit

- Take a deep breath, that may have been stressful!
- Report the interaction to the appropriate executive authority (mayor, manager, or other person responsible for human resources matters for the affected department or entity) so they can determine whether follow-up action is needed
- Go back to providing the great service to your city or town and its residents that you do on a daily basis



## Questions?

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