

February 8, 2023

SENT VIA EMAIL AND REGULAR MAIL

Selectboard
Town of Rutland
C/O Bill Sweet, Town Administrator
181 Business Route 4
Center Rutland, VT 05736



RE: Trespass Notices Restricting Access to Public Property

Dear Rutland Town Selectboard:

We write to draw the Selectboard's attention to significant shortcomings in Rutland Town's procedure and practice for issuing trespass notices for public property. The Town's current trespass notice policy does not adequately protect residents' due process rights as required by the Fourteenth Amendment to the U.S. Constitution. These deficiencies, moreover, render the trespass policy susceptible to misuse. We urge the Selectboard to revise its trespass notice policy to comport with the Town's constitutional obligations.

Trespass notices restrict the recipients' access to property, and their violation entails serious criminal penalties. *See* 13 V.S.A. § 3705. In 2022, after receiving a public records request from the ACLU-VT, the Rutland Town Police Department adopted the Vermont League of Cities and Towns' model policy regarding the issuance of trespass notices.¹ Unfortunately, although this policy may provide sufficient guidance for issuing trespass notices for *private* property, it affords insufficient procedural protections for *public* property.

Individuals have a constitutionally protected liberty interest in accessing property generally held open to the public. *See Huminski v. Corsones*, 396 F.3d 53, 88–90 (2d Cir. 2005); *see also City of Chicago v. Morales*, 527 U.S. 41, 53 (1999). When a town limits that access by issuing a trespass notice, the Due Process Clause of the Fourteenth Amendment requires that the individual receive, at the very least, notice and an opportunity to be heard to contest it. *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 312 (1985). Simply put, a trespass notice for public property must inform the individual why their rights are being restricted and how to challenge the notice. Although its model policy does not yet reflect these requirements, the Vermont League of Cities and Towns agrees: in an [article summarizing the ruling](#) in an ACLU-VT case, the League emphasized that, when issuing trespass notices for public property, towns must provide due process, including a “set out process for contesting’ a ban, giving the person a meaningful opportunity to contest it.”

Yet Rutland Town's current policy provides none of those legally necessary protections. The policy does not require the notice to state the reason for its

¹ Prior to 2022, the Police Department issued notices on a case-by-case basis, according to Chief of Police Edward Dumas.

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issuance. Nor does the Town have a process by which individuals can challenge a notice for public property after it is issued.

These deficiencies render the Town's trespass notices issued for public property not only constitutionally defective, but also at risk of misuse by government officials. There is a concerning pattern in Rutland Town of trespass notices for public property being issued at behest of Selectboard members. Based on information obtained through public records requests and discussions with Town residents, from 2020 to 2022, Rutland Town police have issued at least 10 trespass notices restricting access to public property.² Strikingly, police served six of those notices at the express request or prompting of Selectboard members. When an official uses their position to effectively restrict a resident's ability to participate in public life with neither clear criteria to guide their decision-making nor adequate procedural safeguards in place, there is a heightened risk that the official is erroneously depriving a resident of their rights. *See Cyr v. Addison Rutland Supervisory Union*, 60 F. Supp. 3d 536, 552 (D. Vt. 2014).

True, this problem of due process deficiencies is not limited to Rutland Town. Many Vermont cities and towns lack adequate procedural safeguards for issuing trespass notices for public property. But we hope—and expect—that will change. As you may know, the ACLU-VT recently [filed a lawsuit](#) against the City of Newport, attached, for issuing a trespass notice encompassing public parks and city property without an explanation or an opportunity to be heard. Likewise, we [filed an amicus brief](#) earlier this month in support of a Montpelier resident not-trespassed and forcibly removed from a city council meeting without due process. And the ACLU-VT has also won a case against the [Addison Rutland Supervisory Union](#) and settled another with the [City of Burlington](#), respectively, over trespass notices that failed to respect residents' rights. These same defects that have been the subject of past and current lawsuits also characterize Rutland Town's trespass notice procedures.

We urge the Selectboard to consult with legal counsel and the Vermont League of Cities and Towns on modifying the Town's trespass notice policy to conform with constitutional requirements. Although the League previously rejected the ACLU-VT's invitation to collaborate to craft a model policy, the League has also acknowledged the constitutional requirements of due process highlighted by our recent work, and we hope that your Town's request will galvanize the League to provide guidance and honor its mandate to serve Vermont municipalities. As you consider the necessary changes, we also encourage you to look to the City of Burlington's ordinance adopted after a [settlement](#) with the ACLU-VT as an example of procedures that both advance public safety and respect individuals' rights.

We hope that the Selectboard takes this opportunity to adjust its practices and remedy its presently deficient policy to better protect its residents—and to

² Public property to which the Town has denied residents access includes Northwood Park, the entrance to Green Mountain Plaza, Town Hall, and recreation facilities and fields.

protect the Town from liability. Please contact me at 802-257-6882 or at hricht@aclutvt.org if you would like to discuss this issue further.

Sincerely,

A handwritten signature in black ink, appearing to read "Hillary Rich".

Hillary Rich
Staff Attorney, ACLU of Vermont

Encl.