



January 24, 2019

Via Electronic Mail

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Florissant, MO 63031
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E-mail: kgoodwin@florissantmo.com

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Florissant City Mayor
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Re: Florissant’s Ordinances and Sunshine Law Request for Records

Dear Ms. Goodwin, Mayor Schneider, and Florissant City Council Members:

The ACLU and Metropolitan St. Louis Equal Housing and Opportunity Council (“EHOC”) write to call your attention to an important issue that affects the security and housing of Florissant residents and creates liability for the City of Florissant itself. The ACLU and EHOC defend and advance civil rights and fair housing across the country and in Missouri, and for the last several years, have engaged in litigation, public education and outreach, and policy advocacy to challenge the detrimental impact of local “nuisance” or “crime-free” ordinances on communities and their residents.

We are concerned with the City’s Nuisance ordinance, found in Chapter 213 of the Florissant Municipal Code (“Code”), as well as the City’s Residential Rental Real Estate ordinance, found in Chapter 605 of the Code. Ordinances, such as these, infringe on residents’ statutory and constitutional rights. Moreover, they harm victims of crime, who may be punished under the ordinances for seeking police assistance or reporting criminal activity.

The city of Maplewood, Missouri recently overhauled its nuisance ordinance as part of a settlement agreement in a federal lawsuit brought against the municipality by the ACLU of Missouri and ACLU Women’s Rights Project.¹ Maplewood’s prior ordinance authorized officials to revoke a resident’s occupancy permit based on calls for police assistance because of crimes occurring at the property. Based on the plaintiff’s calls for police assistance due to domestic violence on four occasions, Maplewood found that the plaintiff was a nuisance, revoked her occupancy permit, and denied her a new permit for 180 days. Maplewood’s revised ordinance now includes protections for crime victims against penalty under the ordinance. Additionally, Maplewood will no longer enforce its nuisance ordinance against victims of crime or penalize residents based on calls for police or emergency services. The settlement also required Maplewood to provide \$137,000 in compensation to the plaintiff. It follows settlements in other lawsuits brought by the ACLU challenging similar ordinances in Norristown, PA and Surprise, AZ, which resulted in those cities’ repeals of their ordinances and monetary payments of \$495,000 and over \$200,000, respectively.²

We believe that the City’s ordinances are also unlawful, and we urge the City to rescind these ordinances. In this letter, we (1) explain why the City’s ordinances are unlawful under state and federal statutory and constitutional provisions; and (2) set forth a request for records related to the ordinances pursuant to the Sunshine Law, Mo. Rev. Stat. § 610.010 *et seq.*

Florissant’s Ordinances Violate State and Federal Law

Based on our review, the City’s ordinances run afoul of several state and federal statutory and constitutional protections, including, but not limited to:

- *First Amendment Right to Speech/Right to Petition the Government:* The First Amendment to the United States Constitution, as well as the corresponding provisions in the Missouri Constitution, guarantee the right to freedom of speech and the right to petition the government for redress of grievances.³ The First Amendment prohibits government actors from penalizing speech based on its content.⁴ Moreover, under the First Amendment’s “right to petition” clause, communications to law enforcement—

¹ Release and Settlement Agreement, *Watson v. City of Maplewood* (Aug. 17, 2018) (No. 4:17-cv-1268), <https://www.aclu.org/legal-document/watson-v-maplewood-settlement>.

² See, e.g., Release and Settlement Agreement, *Briggs v. Borough of Norristown* (Sept. 18, 2014) (No. 2:13-cv-02191-ER), https://www.aclu.org/sites/default/files/field_document/2014.09.18_-_release_and_settlement_agreement_-_fully_executed.pdf; Release and Settlement Agreement, *Markham v. City of Surprise* (Mar. 21, 2016) (No. 2:15-cv-01696-SRB), <https://www.aclu.org/legal-document/nancy-markham-v-city-surprise-settlement-agreement-mar-21-2016>.

³ U.S. CONST. amend. I; MO. CONST. art. 1, §§ 8, 9.

⁴ *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 641–43 (1994).

including (1) reporting physical assault, (2) reporting criminal activity, and (3) filing a complaint with law enforcement—are constitutionally protected activities.⁵ Similarly, the Missouri Constitution provides that “no law shall be passed impairing the freedom of speech, no matter by what means communicated,”⁶ and that “the people have the right . . . to apply to those invested with the powers of government for redress of grievances by petition or remonstrance.”⁷

The City’s ordinance provides that a “nuisance” includes “[a]ll . . . acts, practices, conduct, business, occupation callings, trades, uses of property and all other things detrimental or certain to be detrimental to the health of the inhabitants of the City of Florissant.”⁸ Notably, there is no exception for victims of crime. Moreover, Florissant’s rental license ordinance provides that a “license may be suspended or revoked if it has been determined that any member of the household, guest or another person under the resident’s control has committed any of the following criminal activities,” including: (1) a felony or misdemeanor under local, state, or federal laws; (2) “[a]ny criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by other residents; [or] . . . of their residents or persons residing in the immediate vicinity of the premises;” (3) “[a]ny violent criminal activity at or near the premises;” or (4) any “[v]iolation(s) of nuisance provisions set forth in Chapter 213 of the . . . Code.”⁹ By providing an overly broad definition of “nuisance,” the City’s ordinance discourages residents from reporting criminal activity or seeking emergency assistance for fear of triggering the ordinance’s penalties.¹⁰ Accordingly, the City’s ordinance infringes on residents’ federal and state constitutional rights.

- *Fourteenth Amendment Right to Due Process:* The Due Process Clause of the Fourteenth Amendment, and its Missouri counterpart, protect individuals from being deprived of property without due process of law.¹¹ The City’s ordinance authorizes the Director of Public Works to immediately suspend or revoke a residential rental license, without requiring any notice to the occupants or tenants, “if it has been determined that any member of the household, guest or another person under the resident’s control has committed any of the [named] criminal activities, regardless of whether such person has been convicted.”¹² Additionally, the ordinance permits the City to suspend or a revoke a residential rental license without requiring a hearing. Following the suspension or revocation of a residential rental license, the property owner may apply for reinstatement,

⁵ See, e.g., *BE & K Constr. Co. v. N.L.R.B.*, 536 U.S. 516, 524 (2002); *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972); *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138–39 (1961).

⁶ MO. CONST. art. 1, § 8.

⁷ *Id.* § 9.

⁸ FLORISSANT, MO., CODE § 213.010(16) (2018).

⁹ *Id.* § 605.461.

¹⁰ See, e.g., *Watson v. City of Maplewood*, No. 4:17CV1268, 2017 WL 4758960, at *5–6 (E.D. Mo. Oct. 20, 2017); *Bd. of Trs. of Groton v. Pirro*, 152 A.D.3d 149, 158–61 (N.Y. App. Div. 2017); see also Gretchen Arnold, *Neoliberalism’s Assault on Women’s Citizenship: The Case of Nuisance Laws and Intimate Partner Violence in the United States*, *The Sociological Quarterly*, at 9 (Dec. 20, 2018), <https://doi.org/10.1080/00380253.2018.1526051>.

¹¹ U.S. CONST. amend. XIV; MO. CONST. art. 1, §§ 2, 10.

¹² FLORISSANT, MO., CODE § 605.461(A).

or may appeal the suspension or revocation within ten days.¹³ It is only after the owner appeals the suspension or revocation that the owner may receive a hearing before the Director of Public Works. The ordinance, however, does not guarantee an impartial decision-maker for the hearing. Moreover, the ordinance does provide tenants or occupants with any opportunity to be heard or to challenge the grounds for suspension or revocation. Accordingly, the City's ordinance violates residents' procedural due process rights by failing to provide owners and occupants with adequate procedural protections when the City imposes fees, suspends or revokes a residential rental license, or requires a tenant or occupant to leave a property.¹⁴

- *Fair Housing Act's Prohibition Against Discrimination:* Pursuant to the Fair Housing Act ("FHA"), laws may not discriminate on the basis of sex, race, and/or disability.¹⁵ Importantly, the U.S. Department of Housing and Urban Development ("HUD") has issued guidance stating that nuisance ordinances that have an unjustified discriminatory effect on victims of domestic violence violate the FHA.¹⁶ HUD's guidance further explained that, where nuisance ordinances have a disparate impact on victims of domestic violence, local governments face a "difficult burden" in justifying their use and that repealing nuisance ordinances is "[o]ne step a local government may take toward meeting its duty to affirmatively further fair housing."¹⁷ Recent studies have shown that nuisance ordinance laws are disproportionately enforced against survivors of domestic violence, who are overwhelmingly women, and often jeopardize their access to safe and stable housing.¹⁸ A 2017 study of nuisance ordinances in Ohio, for example, found that more than half of all nuisance abatement letters in some cities were sent in response to domestic violence incidents.¹⁹ The City's ordinance lists "[a]ll . . . acts, practices, conduct, business, occupation callings, trades, uses of property and all other things detrimental or certain to be detrimental to the health of the inhabitants of the City of Florissant" as a potential grounds for triggering the nuisance abatement process, without carving out explicit protections for victims of crime.²⁰ Without such an exception, there is an increased risk that the City may treat crime victims—including victims of domestic violence—as "culpable for their own victimization."²¹

Moreover, researchers and others have found that nuisance and crime-free ordinances have a disparate impact on racial minorities and persons with disabilities. A study based in Milwaukee, for example, revealed that properties located in predominantly African-

¹³ *Id.* §§ 605.461(B)-(D).

¹⁴ *See, e.g., St. Louis Ass'n of Realtors v. St. Louis Cty.*, No. 15SL-CC04443 (St. Louis Cty. Cir. Ct. June 2, 2017); *Javinsky-Wenzek v. City of St. Louis Park*, 829 F. Supp. 2d 787, 796 (D. Minn. 2011).

¹⁵ 42 U.S.C. § 3604.

¹⁶ U.S. Department of Housing and Urban Development, *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services* (Sept. 13, 2016), <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>.

¹⁷ *Id.* at 9, 12.

¹⁸ *See Arnold, supra* note 10, at 2–3, 18.

¹⁹ Joseph Mead, et al., *Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio*, Urban Publications (Nov. 8, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3067028.

²⁰ FLORISSANT, MO., CODE § 213.010(16) (2018).

²¹ *Arnold, supra* note 10, at 11.

American neighborhoods were consistently more likely to receive nuisance citations than those in other neighborhoods from which a similar number of calls were placed.²² Additionally, research has shown that nuisance ordinances may endanger housing security for persons with disabilities, who may need to access emergency assistance with some frequency.²³

Request for Records under the Sunshine Law Regarding Florissant's Ordinances

On February 26, 2018, and on September 26, 2018, EHOc requested that the City produce several documents pursuant to the Missouri Sunshine Law, Mo. Rev. Stat. § 610.010 *et seq.* In light of the City's failure to produce such documents, we request copies of public records related to Florissant's nuisance ordinance, found in Chapter 213 of the Code, as well as the City's Residential Rental Real Estate ordinance, found in Chapter 605 of the Code. Specifically, we request the following records and information:

1. All calls for service or computer-assisted dispatching data corresponding with police and/or incident reports and notices sent pursuant to Florissant, Mo. Code § 213.010(A)(16), on or after October 10, 2016, including electronic summaries or databases containing this information;
2. All documents related to police department policies, rules, and procedures for enforcing Florissant, Mo. Code § 605.461(A)(3) or § 605.461(A)(4), including any documents relating to internal trainings for enforcing the named ordinances;
3. All records relating to the name, address, race, gender, family size, and resolution of the matter for each tenant whose dwelling has been cited and/or had their occupancy permit suspended or revoked pursuant to Florissant, Mo. Code § 605.461(A)(3) and § 605.461(A)(4), on or after October 10, 2016;
4. Any and all written decisions by the Director of Public Works or Florissant Municipal Court for each citation, suspension, or revocation of residential rental licenses pursuant to Florissant, Mo. Code § 605.461(A)(3) and § 605.461(A)(4), on or after October 10, 2016.

Wherever possible, please provide the requested records in electronic format. If requested records are maintained in a computer database, please contact us before retrieving the records so that we can ensure that the retrieved records are in a usable and readable format.

Because disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the administration and enforcement of

²² Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOCIOLOGICAL REV. 117, 125–30 (2013), http://scholar.harvard.edu/files/mdesmond/files/desmond.valdez.unpolicing.asr_0.pdf.

²³ Joseph Mead et al., *Treating Neighbors as Nuisances: Troubling Applications of Criminal Activity Nuisance Ordinances*, 66 CLEV. ST. L. REV., Mar. 24, 2018, at 1–15, <http://www.clevstlrev.org/wp-content/uploads/2018/03/66-Clev-St-L-Rev-Et-Cetera-3-2018-Treating-Neighbors-As-Nuisances-by-Joseph-Mead-et-al.pdf>; see also Complaint at 2–3, *Metro. St. Louis Equal Hous. & Opportunity Council v. City of Maplewood*, No. 17-cv-886 (E.D. Mo. Mar. 13, 2017), <https://www.clearinghouse.net/chDocs/public/FH-MO-0006-0001.pdf>.

Florissant's nuisance ordinance, we further request a waiver or, alternatively, reduction of all related fees.²⁴ EHOCA, ACLU of Missouri, and ACLU Women's Rights Project are nonprofit organizations, and our request is related to ensuring equal access to safe and stable housing. The information is not being sought for commercial purposes. If the City will not waive fees, please send an itemized invoice with the anticipated costs.

Please note that this request must "be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request is received." Mo. Rev. Stat. § 610.023.3.

If it is not possible to furnish the records electronically, please mail them to:

Jessie Steffan
ACLU of Missouri
906 Olive St., Suite 1130
St. Louis, MO 63101
jsteffan@aclu-mo.org

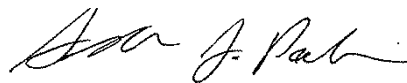
If you deny any or all of this request, please send a letter listing each specific exemption upon which you rely for each denial and provide the contact information for the official to whom I may appeal. Mo. Rev. Stat. § 610.023.4.

Additionally, please contact Jessie Steffan at (314) 652-3114 **no later than February 8, 2019** to advise us of whether Florissant plans to rescind its nuisance ordinance. We welcome the opportunity to discuss this matter further with you. Thank you for your consideration.

Sincerely,



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²⁴ MO. REV. STAT. § 610.026 (2004).

/s/

Jessie Steffan
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A handwritten signature in black ink, appearing to read "Kalila J. Jackson", with a long horizontal flourish extending to the right.

Kalila J. Jackson
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