



January 24, 2019

Via Electronic Mail

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Re: University City’s Nuisance Ordinance and Sunshine Law Request for Records

Dear Ms. Reese, Mayor Crow, and University 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 University City residents and creates liability for the City 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, known as “Nuisances” and found in Chapter 220 of the University City Municipal Code. Nuisance ordinances, such as this one,

infringe on residents' statutory and constitutional rights. Moreover, they harm victims of crime, who may be punished under the ordinance 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 nuisance ordinance is also unlawful, and we urge the City to rescind this ordinance. In this letter, we (1) explain why the City's nuisance ordinance is unlawful under state and federal statutory and constitutional provisions; and (2) set forth a request for records related to the ordinance pursuant to the Sunshine Law, Mo. Rev. Stat. § 610.010 *et seq.*

The University City's Nuisance Ordinance Violates State and Federal Law

Based on our review, the City's nuisance ordinance runs 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—including (1) reporting physical assault, (2) reporting criminal activity, and (3) filing a

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).

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 nuisance ordinance provides that a criminal nuisance exists when, over the course of twelve months, there is more than one occurrence of “[a]ny . . . condition or activity prohibited by [local, state, or federal law] and injurious or detrimental to the health, safety, welfare, or convenience of the inhabitants of the City”⁸ 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.⁹ 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.¹⁰ The City’s ordinance authorizes the imposition of criminal penalties, such as fines and imprisonment, and the closing and boarding of a property if a nuisance continues following the initial notice that a nuisance exists.¹¹ The ordinance also provides the City with discretion to impose other measures, including the “initiation and execution of eviction proceedings against tenants or occupants who engaged in the nuisance behavior”¹² The ordinance, however, does not provide the owner or occupant with adequate procedural protections. Importantly, the ordinance fails to ensure notice to the property’s tenant or occupant of the nuisance ordinance enforcement proceedings, the guarantee of an impartial decision-maker, or any process to challenge or appeal the City’s order. Accordingly, the City’s ordinance violates residents’ procedural due process rights by failing to provide owners and occupants with adequate procedural protections.
- *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.¹³ 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

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 UNIVERSITY CITY, MO., CODE § 220.270 (2012).

⁹ 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>.

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

¹¹ UNIVERSITY CITY, MO., CODE §§ 220.270(D)–(E).

¹² *Id.* § 220.270(E).

¹³ 42 U.S.C. § 3604.

of domestic violence violate the FHA.¹⁴ 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.”¹⁵ 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.¹⁶ 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.¹⁷ The City’s ordinance lists “[a]ny . . . condition or activity prohibited by [local, state, or federal law] and injurious or detrimental to the health, safety, welfare, or convenience of the inhabitants of the City” as a potential grounds for triggering a nuisance determination, without carving out explicit protections for victims of crime.¹⁸ 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.”¹⁹

Moreover, researchers and others have found that nuisance 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-American neighborhoods were consistently more likely to receive nuisance citations than those in other neighborhoods from which a similar number of calls were placed.²⁰ 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.²¹

Request for Records under the Sunshine Law Regarding University City’s Ordinance

Pursuant to the Missouri Sunshine Law, Mo. Rev. Stat. § 610.010 *et seq.*, we request copies of public records related to the City’s nuisance ordinance, entitled “Nuisances” and found

¹⁴ 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>.

¹⁵ *Id.* at 9, 12.

¹⁶ See Arnold, *supra* note 9, at 2–3, 18.

¹⁷ 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.

¹⁸ UNIVERSITY CITY, MO., CODE § 220.270 (2012).

¹⁹ Arnold, *supra* note 9, at 11.

²⁰ 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.

²¹ 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>.

in Chapter 220 of the City's municipal code. Specifically, we request the following records and information:

1. Any and all policies, guidelines, procedures, rules, and regulations used or relied upon to administer and/or enforce Chapter 220 of the City's municipal code, existing on or after December 1, 2015;
2. Any and all internal correspondence or record of conversations in whatever form generated (including emails and text messages) between any City officials or employees regarding the administration, enforcement, and/or appeals pursuant to Chapter 220 of the City's municipal code, on or after December 1, 2015;
3. Any and all correspondence or record of conversations in whatever form generated (including emails and text messages) between any City officials or employees and any member of the public, including but not limited to landlords and tenants, regarding the administration, enforcement, and/or appeals pursuant to Chapter 220 of the City's municipal code, on or after December 1, 2015;
4. Any and all policies, guidelines, procedures, rules, and regulations used or issued to implement Chapter 220 of the City's municipal code;
5. All calls for service or computer-assisted dispatching data corresponding with police and/or incident reports and notices sent pursuant to Chapter 220 of the City's municipal code, on or after December 1, 2015, including electronic summaries or databases containing this information;
6. Final or draft requests for the City's action related to Chapter 220 of the City's municipal code, created or reviewed by a city employee, including but not limited to police department or city council members, as well as any and all correspondence related to drafts or requests, on or after December 1, 2015;
7. All correspondence (including e-mails) or record of conversations between any city employee and any member of the public, including but not limited to landlords and tenants, regarding the enactment and enforcement of Chapter 220 of the City's municipal code;
8. All records relating to citations and suspended or revoked occupancy permits issued pursuant to Chapter 220 of the City's municipal code, on or after December 1, 2015;
9. 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 Chapter 220 of the City's municipal code, on or after December 1, 2015;

10. Any and all written decisions by the City for each citation, suspension, or revocation of occupancy permits pursuant to Chapter 220 of the City's municipal code, on or after December 1, 2015;
11. Any and all written findings issued by the City for appeals of suspension or revocation pursuant to Chapter 220 of the City's municipal code, on or after December 1, 2015;
12. Any and all written appeals of suspension or revocation pursuant to Chapter 220 of the City's municipal code, on or after December 1, 2015.

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 the City's nuisance ordinance, we further request a waiver or, alternatively, reduction of all related fees.²² 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.

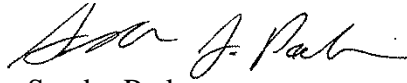
Additionally, please contact Jessie Steffan at (314) 652-3114 **no later than February 8, 2019** to advise us of whether the City plans to rescind its nuisance ordinance. We welcome the opportunity to discuss this matter further with you. Thank you for your consideration.

²² MO. REV. STAT. § 610.026 (2004).

Sincerely,



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