May 11, 2016

VIA FACSIMILE AND ELECTRONIC MAIL

Esmeralda Soria
Council Member
Fresno City Council
2600 Fresno St
Fresno, CA 93721

RE: Proposed Nuisance Ordinance, Chapter 10, Article 7, §§10-701 – 10-716 of the Fresno Municipal Code

Dear Councilmember Esmeralda Soria:

We are writing to express our concerns regarding Fresno's proposed revision to the Nuisance Ordinance, to be discussed at the May 12, 2016 City Council meeting. We understand that the proposed Ordinance is being introduced as a result of a concern by residents and City officials about blight and crime in the City. However, the Ordinance is riddled with vague and overly broad language which chills basic constitutional freedoms. As it is unclear whether the City has reviewed the proposed revisions with a deep analysis, the likely result of these changes will target the City's most vulnerable residents.

I. The Ordinance is overly broad and vague, creating the likelihood of overly intrusive and discriminatory enforcement.

First, the Ordinance's unclear definitions and procedural gaps will inevitably result in arbitrary and discriminatory enforcement. For example, the Ordinance repeatedly refers to "responsible parties," which is defined broadly to include "owners, tenants, occupants, property managers, and homeowners' association." §10-704(k). It then makes every "responsible party of real property" liable for a number of activities that occur "on the real property of the owner" or, in some circumstances, nearby areas. §§10-706(a), 10-708(a), (g). This liability may be joint and several. § 10-706(a). Taken together, these provisions appear to make a tenant or occupant of a multi-unit building responsible for violations that occur anywhere on the property. This will likely lead to unfair enforcement against the most convenient "responsible party." §10-706(a).

This is not the only part of the Ordinance that is overly vague. The Ordinance does not attempt to clarify how a City representative could determine if a person has "constructive or actual" knowledge of a violation. §10-708. Nor does it explain how a tenant or other "occupant"

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will have actual or constructive knowledge that "identity theft or fraud" is taking place, §10-708(g)(2), much less how an enforcement officer will determine this. Nor does it explain how a tenant is supposed to know that a guest "is known to law enforcement" to be a gang member using "Fresno Police Department's 10 Criteria" or that they "have an intent to engage in any criminal conduct on the premises." § 10-708(b), (d). *See Lanzetta v. New Jersey*, 306 U.S. (1939) 451, 458 ("The enactment employs the expression, 'known to be a member'. It is ambiguous."). It is also hard to see how a tenant would know that the number of police calls to her unit or the adjacent areas is "occurring more than 1.50 times than the average number of such responses for property of a similar size and character in the same policing district." § 10-708(g). It is unclear if the City Council has asked or considered any of these points, under current revisions or previous iterations of the Ordinance.

The Ordinance fails to clearly define the responsible party's role that will result in citations and who is left to pay for violations since each "responsible party" is considered "jointly and severally liable." §10-706(a). For example, any "responsible party" can be liable for "verbal disturbances." §10-708(i). This lack of clarity will allow the Ordinance to perpetuate unfair stereotypes regarding which individuals likely cause a "verbal disturbance." *See City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) ("It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits...."); *see also Gooding v. Wilson* 405 U.S. 518, 527 (1972) ("This definition makes it a 'breach of peace' merely to speak words offensive to some who hear them, and so sweeps too broadly."). For example, tenants may root for their favorite sports team while watching a game, while a tenant or another occupant may then have a conversation with a friend outside, and the Ordinance could deem both as "verbal disturbances." In fact, the "responsible party" need only receive one citation for a "verbal disturbance" because any "combination of" violations under §10-708(g) will be considered in the "frequent response" calculus for that residence. §10-708(g). Recently, news reports explained that the City code enforcement officers targeted a "substandard" housing unit for code violations because of the number of police and firefighter calls.[1] Now the Ordinance will expand who will be responsible for these violations and create joint and several liability with any "responsible party." The Ordinance raises serious concerns regarding why the Ordinance now expands liability to low-income tenants who, under the Ordinance revisions, would also be responsible for clear failings to those individuals.

Tenants and occupants can be cited for "making or continuing, or causing to be made and continued, of any loud, unnecessary or unusual noise which disturbs the peace and quiet of the neighborhood." §10-708(e). The Ordinance's ban on loud noises at all times is unconstitutional. *See In re Brown*, 9 Cal. 3d 612, 620 (1973) (reasoning "the manner limitation, 'loud,' is so broad

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as to amount to a total prohibition on loud public speech."). Additionally, the term "unnecessary or unusual noise" is likely unconstitutionally vague. *See Jim Crockett Promotion, Inc. v. City of Charlotte*, 706 F.2d 486, 489 (4th Cir. 1983) (ordinance prohibiting "unnecessary noise" held unconstitutionally vague.). For example, individuals playing music that residents have never heard could be considered "unusual or unnecessary" with this broad definition. Indeed, the Ordinance's description of "unusual or unnecessary noise" invites many similar hypothetical applications which render the Ordinance unconstitutionally overbroad. No person can have adequate notice as to what an "unnecessary or unusual" noise is under the Ordinance.

The Ordinance's failure to narrowly and clearly define the prohibited conduct increases the likelihood that such a law will be applied in an unfair and discriminatory manner. It is well established that in addition to providing notice of what conduct is prohibited, laws must be drafted "in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). For example, uncharged nonviolent criminal acts are punishable under the Ordinance. §10-708(g)(2).

Without expending exorbitant amounts of time and money, discriminatory Ordinance enforcement is inevitable. It is predictable that its enforcement will be very selective and based on subjective gut reactions of police officers and other City administrators for which tenants, occupants, and other responsible parties should be targeted, and which people have "constructive or actual knowledge" of any of these violations.

The lack of specificity in the Ordinance's description of conduct which may be used to cite tenants, occupants, and other "responsible parties" jointly is highly susceptible to abusive, arbitrary, and discriminatory enforcement.

II. There are significant enforcement concerns regarding "responsible party" obligations.

Second, the Ordinance states that the citation will list the name of persons conducting the activity, but it fails to differentiate which activity or which "responsible party" will be cited if there are multiple violations by different individuals. The Ordinance does not clarify the process for attributing Ordinance violations to multiple responsible parties. For example, if a tenant just moved to the residence, and receives an Ordinance violation, but another "responsible party" already has calls attributable to the residence, is the new resident potentially liable or subject to a lower threshold of liability based on the residence's prior history? The Ordinance then requires owners to track down and find any other person who is also considered a "responsible party." §10-709. However, because each party is jointly and severally liable, indeed the most likely person who conveniently may receive the notice from the owner is the tenant, regardless of their actual role in the Ordinance violation.

Further, a tenant who happens to be more readily accessible should not be forced to pay fines and potentially legal fees because of convenience. The implications of enforcement raise

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serious concerns with any "responsible party" paying fees for a violation they may have not committed and the obvious challenges in recovering any or all of those fees are of deep concern.

III. The Ordinance revisions undermine law enforcement and hurt domestic violence victims.

Third, the Ordinance undermines law enforcement efforts by penalizing calls for help. The proposed Ordinance can punish any person habitually causing a "juvenile or domestic disturbance" "call." §10-708(g)(5). This Ordinance will disproportionately impact victims of domestic violence who may feel forced to remain silent in fear of the severe penalties the City seeks to enforce.

As a result, this Ordinance raises serious First Amendment and due process concerns of suppressing truthful reporting of domestic violence activity. A person who may consider calling the police to report domestic violence may now refrain in fear of the City's repercussions for truthfully reporting domestic violence. Under the Ordinance, the City would track these calls, not necessarily to help victims, but to potentially force them to pay up to $50,000. This Ordinance runs counter to the purpose of domestic violence accountability structures. Given the high number of domestic violence cases in California, cities should focus on providing services to victims of abuse, rather than diminishing their victimization with severe fines and threat of legal proceedings.

IV. The Ordinance contravenes fair housing obligations related to victims of domestic violence.

Lastly, the U.S. Department of Housing and Urban Development (HUD) has made clear that policies may not violate the Fair Housing Act's prohibitions based on protected categories, including race and gender. The proposed expansion of the Ordinance undermines state and federal fair housing laws protecting among others immigrants, families with children, and other low-income people and families. HUD stated that "Victims are often evicted after repeated calls to the police for domestic violence incidents because of allegation of disturbance to other tenants."[2] The proposed Ordinance would similarly undercut the meaning of the Fair Housing Act because victims could be fined up to $50,000 for reporting domestic violence or potentially for other vague reasons such as "unnecessary or unusual noise."

For survivors of domestic violence, disorderly or crime-free ordinances such as the proposed Ordinance endanger those victims and violates Fresno's commitment to fair housing. The Ordinance exacerbates these issues by discouraging victims to report cases of domestic violence.

[2] "Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence against Women Act", HUD. Feb. 2011, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=11-domestic-violence-memo.pdf.

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Conclusion

We have outlined only some of the most troubling provisions of the Ordinance. The entire ordinance is filled with constitutional pitfalls, conflicts with existing statutory law, and bad public policy. State law and existing Fresno ordinances provide ample tools to review issues raised by the community. The reactionary decision to vote on these provisions on May 12th does not demonstrate due diligence on behalf of the City Council.

We recognize the adverse impacts of blight and other community needs. However, for the reasons set forth above, we believe these revisions have not been properly vetted to make a judicious decision with a critical eye to areas of concern. We urge you not to enact this law which will adversely impact some of Fresno's most vulnerable residents and which is inconsistent with the fundamental principles of fairness and due process in our system of justice.

Sincerely,

Abre' Conner
Staff Attorney
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Tenants Together

CC: Yvonne Spence, City Clerk
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Steve Brandau
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2600 Fresno St
Fresno, CA 93721

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Third, the Ordinance undermines law enforcement efforts by penalizing calls for help. The proposed Ordinance can punish any person habitually causing a "juvenile or domestic disturbance" "call." §10-708(g)(5). This Ordinance will disproportionately impact victims of domestic violence who may feel forced to remain silent in fear of the severe penalties the City seeks to enforce.

As a result, this Ordinance raises serious First Amendment and due process concerns of suppressing truthful reporting of domestic violence activity. A person who may consider calling the police to report domestic violence may now refrain in fear of the City's repercussions for truthfully reporting domestic violence. Under the Ordinance, the City would track these calls, not necessarily to help victims, but to potentially force them to pay up to $50,000. This Ordinance runs counter to the purpose of domestic violence accountability structures. Given the high number of domestic violence cases in California, cities should focus on providing services to victims of abuse, rather than diminishing their victimization with severe fines and threat of legal proceedings.

IV. The Ordinance contravenes fair housing obligations related to victims of domestic violence.

Lastly, the U.S. Department of Housing and Urban Development (HUD) has made clear that policies may not violate the Fair Housing Act's prohibitions based on protected categories, including race and gender. The proposed expansion of the Ordinance undermines state and federal fair housing laws protecting among others immigrants, families with children, and other low-income people and families. HUD stated that "Victims are often evicted after repeated calls to the police for domestic violence incidents because of allegation of disturbance to other tenants."[4] The proposed Ordinance would similarly undercut the meaning of the Fair Housing Act because victims could be fined up to $50,000 for reporting domestic violence or potentially for other vague reasons such as "unnecessary or unusual noise."

For survivors of domestic violence, disorderly or crime-free ordinances such as the proposed Ordinance endanger those victims and violates Fresno's commitment to fair housing. The Ordinance exacerbates these issues by discouraging victims to report cases of domestic violence.

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Oliver L. Barnes III
Council Member
Fresno City Council
2600 Fresno St
Fresno, CA 93721

RE: Proposed Nuisance Ordinance, Chapter 10, Article 7, §§10-701 – 10-716 of the Fresno Municipal Code

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as to amount to a total prohibition on loud public speech."). Additionally, the term "unnecessary or unusual noise" is likely unconstitutionally vague. *See Jim Crockett Promotion, Inc. v. City of Charlotte*, 706 F.2d 486, 489 (4th Cir. 1983) (ordinance prohibiting "unnecessary noise" held unconstitutionally vague.). For example, individuals playing music that residents have never heard could be considered "unusual or unnecessary" with this broad definition. Indeed, the Ordinance's description of "unusual or unnecessary noise" invites many similar hypothetical applications which render the Ordinance unconstitutionally overbroad. No person can have adequate notice as to what an "unnecessary or unusual" noise is under the Ordinance.

The Ordinance's failure to narrowly and clearly define the prohibited conduct increases the likelihood that such a law will be applied in an unfair and discriminatory manner. It is well established that in addition to providing notice of what conduct is prohibited, laws must be drafted "in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). For example, uncharged nonviolent criminal acts are punishable under the Ordinance. §10-708(g)(2).

Without expending exorbitant amounts of time and money, discriminatory Ordinance enforcement is inevitable. It is predictable that its enforcement will be very selective and based on subjective gut reactions of police officers and other City administrators for which tenants, occupants, and other responsible parties should be targeted, and which people have "constructive or actual knowledge" of any of these violations.

The lack of specificity in the Ordinance's description of conduct which may be used to cite tenants, occupants, and other "responsible parties" jointly is highly susceptible to abusive, arbitrary, and discriminatory enforcement.

II. There are significant enforcement concerns regarding "responsible party" obligations.

Second, the Ordinance states that the citation will list the name of persons conducting the activity, but it fails to differentiate which activity or which "responsible party" will be cited if there are multiple violations by different individuals. The Ordinance does not clarify the process for attributing Ordinance violations to multiple responsible parties. For example, if a tenant just moved to the residence, and receives an Ordinance violation, but another "responsible party" already has calls attributable to the residence, is the new resident potentially liable or subject to a lower threshold of liability based on the residence's prior history? The Ordinance then requires owners to track down and find any other person who is also considered a "responsible party." §10-709. However, because each party is jointly and severally liable, indeed the most likely person who conveniently may receive the notice from the owner is the tenant, regardless of their actual role in the Ordinance violation.

Further, a tenant who happens to be more readily accessible should not be forced to pay fines and potentially legal fees because of convenience. The implications of enforcement raise

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serious concerns with any "responsible party" paying fees for a violation they may have not committed and the obvious challenges in recovering any or all of those fees are of deep concern.

III. The Ordinance revisions undermine law enforcement and hurt domestic violence victims.

Third, the Ordinance undermines law enforcement efforts by penalizing calls for help. The proposed Ordinance can punish any person habitually causing a "juvenile or domestic disturbance" "call." §10-708(g)(5). This Ordinance will disproportionately impact victims of domestic violence who may feel forced to remain silent in fear of the severe penalties the City seeks to enforce.

As a result, this Ordinance raises serious First Amendment and due process concerns of suppressing truthful reporting of domestic violence activity. A person who may consider calling the police to report domestic violence may now refrain in fear of the City's repercussions for truthfully reporting domestic violence. Under the Ordinance, the City would track these calls, not necessarily to help victims, but to potentially force them to pay up to $50,000. This Ordinance runs counter to the purpose of domestic violence accountability structures. Given the high number of domestic violence cases in California, cities should focus on providing services to victims of abuse, rather than diminishing their victimization with severe fines and threat of legal proceedings.

IV. The Ordinance contravenes fair housing obligations related to victims of domestic violence.

Lastly, the U.S. Department of Housing and Urban Development (HUD) has made clear that policies may not violate the Fair Housing Act's prohibitions based on protected categories, including race and gender. The proposed expansion of the Ordinance undermines state and federal fair housing laws protecting among others immigrants, families with children, and other low-income people and families. HUD stated that "Victims are often evicted after repeated calls to the police for domestic violence incidents because of allegation of disturbance to other tenants."[6] The proposed Ordinance would similarly undercut the meaning of the Fair Housing Act because victims could be fined up to $50,000 for reporting domestic violence or potentially for other vague reasons such as "unnecessary or unusual noise."

For survivors of domestic violence, disorderly or crime-free ordinances such as the proposed Ordinance endanger those victims and violates Fresno's commitment to fair housing. The Ordinance exacerbates these issues by discouraging victims to report cases of domestic violence.

[6] "Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence against Women Act", HUD. Feb. 2011, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=11-domestic-violence-memo.pdf.

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We have outlined only some of the most troubling provisions of the Ordinance. The entire ordinance is filled with constitutional pitfalls, conflicts with existing statutory law, and bad public policy. State law and existing Fresno ordinances provide ample tools to review issues raised by the community. The reactionary decision to vote on these provisions on May 12th does not demonstrate due diligence on behalf of the City Council.

We recognize the adverse impacts of blight and other community needs. However, for the reasons set forth above, we believe these revisions have not been properly vetted to make a judicious decision with a critical eye to areas of concern. We urge you not to enact this law which will adversely impact some of Fresno's most vulnerable residents and which is inconsistent with the fundamental principles of fairness and due process in our system of justice.

Sincerely,

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May 11, 2016

VIA FACSIMILE AND ELECTRONIC MAIL

Paul Caprioglio
Council Member
Fresno City Council
2600 Fresno St
Fresno, CA 93721

RE: Proposed Nuisance Ordinance, Chapter 10, Article 7, §§10-701 – 10-716 of the Fresno Municipal Code

Dear Councilmember Paul Caprioglio:

We are writing to express our concerns regarding Fresno's proposed revision to the Nuisance Ordinance, to be discussed at the May 12, 2016 City Council meeting. We understand that the proposed Ordinance is being introduced as a result of a concern by residents and City officials about blight and crime in the City. However, the Ordinance is riddled with vague and overly broad language which chills basic constitutional freedoms. As it is unclear whether the City has reviewed the proposed revisions with a deep analysis, the likely result of these changes will target the City's most vulnerable residents.

I. The Ordinance is overly broad and vague, creating the likelihood of overly intrusive and discriminatory enforcement.

First, the Ordinance's unclear definitions and procedural gaps will inevitably result in arbitrary and discriminatory enforcement. For example, the Ordinance repeatedly refers to "responsible parties," which is defined broadly to include "owners, tenants, occupants, property managers, and homeowners' association." §10-704(k). It then makes every "responsible party of real property" liable for a number of activities that occur "on the real property of the owner" or, in some circumstances, nearby areas. §§10-706(a), 10-708(a), (g). This liability may be joint and several. § 10-706(a). Taken together, these provisions appear to make a tenant or occupant of a multi-unit building responsible for violations that occur anywhere on the property. This will likely lead to unfair enforcement against the most convenient "responsible party." §10-706(a).

This is not the only part of the Ordinance that is overly vague. The Ordinance does not attempt to clarify how a City representative could determine if a person has "constructive or actual" knowledge of a violation. §10-708. Nor does it explain how a tenant or other "occupant"

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will have actual or constructive knowledge that "identity theft or fraud" is taking place, §10-708(g)(2), much less how an enforcement officer will determine this. Nor does it explain how a tenant is supposed to know that a guest "is known to law enforcement" to be a gang member using "Fresno Police Department's 10 Criteria" or that they "have an intent to engage in any criminal conduct on the premises." § 10-708(b), (d). *See Lanzetta v. New Jersey*, 306 U.S. (1939) 451, 458 ("The enactment employs the expression, 'known to be a member'. It is ambiguous."). It is also hard to see how a tenant would know that the number of police calls to her unit or the adjacent areas is "occurring more than 1.50 times than the average number of such responses for property of a similar size and character in the same policing district." § 10-708(g). It is unclear if the City Council has asked or considered any of these points, under current revisions or previous iterations of the Ordinance.

The Ordinance fails to clearly define the responsible party's role that will result in citations and who is left to pay for violations since each "responsible party" is considered "jointly and severally liable." §10-706(a). For example, any "responsible party" can be liable for "verbal disturbances." §10-708(i). This lack of clarity will allow the Ordinance to perpetuate unfair stereotypes regarding which individuals likely cause a "verbal disturbance." *See City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) ("It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits...."); *see also Gooding v. Wilson* 405 U.S. 518, 527 (1972) ("This definition makes it a 'breach of peace' merely to speak words offensive to some who hear them, and so sweeps too broadly."). For example, tenants may root for their favorite sports team while watching a game, while a tenant or another occupant may then have a conversation with a friend outside, and the Ordinance could deem both as "verbal disturbances." In fact, the "responsible party" need only receive one citation for a "verbal disturbance" because any "combination of" violations under §10-708(g) will be considered in the "frequent response" calculus for that residence. §10-708(g). Recently, news reports explained that the City code enforcement officers targeted a "substandard" housing unit for code violations because of the number of police and firefighter calls.[7] Now the Ordinance will expand who will be responsible for these violations and create joint and several liability with any "responsible party." The Ordinance raises serious concerns regarding why the Ordinance now expands liability to low-income tenants who, under the Ordinance revisions, would also be responsible for clear failings to those individuals.

Tenants and occupants can be cited for "making or continuing, or causing to be made and continued, of any loud, unnecessary or unusual noise which disturbs the peace and quiet of the neighborhood." §10-708(e). The Ordinance's ban on loud noises at all times is unconstitutional. *See In re Brown*, 9 Cal. 3d 612, 620 (1973) (reasoning "the manner limitation, 'loud,' is so broad

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May 11, 2016

VIA FACSIMILE AND ELECTRONIC MAIL

Sal Quintero
Council Member
Fresno City Council
2600 Fresno St
Fresno, CA 93721

RE: Proposed Nuisance Ordinance, Chapter 10, Article 7, §§10-701 – 10-716 of the Fresno Municipal Code

Dear Councilmember Sal Quintero:

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Conclusion

We have outlined only some of the most troubling provisions of the Ordinance. The entire ordinance is filled with constitutional pitfalls, conflicts with existing statutory law, and bad public policy. State law and existing Fresno ordinances provide ample tools to review issues raised by the community. The reactionary decision to vote on these provisions on May 12th does not demonstrate due diligence on behalf of the City Council.

We recognize the adverse impacts of blight and other community needs. However, for the reasons set forth above, we believe these revisions have not been properly vetted to make a judicious decision with a critical eye to areas of concern. We urge you not to enact this law which will adversely impact some of Fresno's most vulnerable residents and which is inconsistent with the fundamental principles of fairness and due process in our system of justice.

Sincerely,

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May 11, 2016

VIA FACSIMILE AND ELECTRONIC MAIL

Lee Brand
Council Member
Fresno City Council
2600 Fresno St
Fresno, CA 93721

RE: Proposed Nuisance Ordinance, Chapter 10, Article 7, §§10-701 – 10-716 of the Fresno Municipal Code

Dear Councilmember Lee Brand:

We are writing to express our concerns regarding Fresno's proposed revision to the Nuisance Ordinance, to be discussed at the May 12, 2016 City Council meeting. We understand that the proposed Ordinance is being introduced as a result of a concern by residents and City officials about blight and crime in the City. However, the Ordinance is riddled with vague and overly broad language which chills basic constitutional freedoms. As it is unclear whether the City has reviewed the proposed revisions with a deep analysis, the likely result of these changes will target the City's most vulnerable residents.

I. The Ordinance is overly broad and vague, creating the likelihood of overly intrusive and discriminatory enforcement.

First, the Ordinance's unclear definitions and procedural gaps will inevitably result in arbitrary and discriminatory enforcement. For example, the Ordinance repeatedly refers to "responsible parties," which is defined broadly to include "owners, tenants, occupants, property managers, and homeowners' association." §10-704(k). It then makes every "responsible party of real property" liable for a number of activities that occur "on the real property of the owner" or, in some circumstances, nearby areas. §§10-706(a), 10-708(a), (g). This liability may be joint and several. § 10-706(a). Taken together, these provisions appear to make a tenant or occupant of a multi-unit building responsible for violations that occur anywhere on the property. This will likely lead to unfair enforcement against the most convenient "responsible party." §10-706(a).

This is not the only part of the Ordinance that is overly vague. The Ordinance does not attempt to clarify how a City representative could determine if a person has "constructive or actual" knowledge of a violation. §10-708. Nor does it explain how a tenant or other "occupant"

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will have actual or constructive knowledge that "identity theft or fraud" is taking place, §10-708(g)(2), much less how an enforcement officer will determine this. Nor does it explain how a tenant is supposed to know that a guest "is known to law enforcement" to be a gang member using "Fresno Police Department's 10 Criteria" or that they "have an intent to engage in any criminal conduct on the premises." § 10-708(b), (d). *See Lanzetta v. New Jersey*, 306 U.S. (1939) 451, 458 ("The enactment employs the expression, 'known to be a member'. It is ambiguous."). It is also hard to see how a tenant would know that the number of police calls to her unit or the adjacent areas is "occurring more than 1.50 times than the average number of such responses for property of a similar size and character in the same policing district." § 10-708(g). It is unclear if the City Council has asked or considered any of these points, under current revisions or previous iterations of the Ordinance.

The Ordinance fails to clearly define the responsible party's role that will result in citations and who is left to pay for violations since each "responsible party" is considered "jointly and severally liable." §10-706(a). For example, any "responsible party" can be liable for "verbal disturbances." §10-708(i). This lack of clarity will allow the Ordinance to perpetuate unfair stereotypes regarding which individuals likely cause a "verbal disturbance." *See City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) ("It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits...."); *see also Gooding v. Wilson* 405 U.S. 518, 527 (1972) ("This definition makes it a 'breach of peace' merely to speak words offensive to some who hear them, and so sweeps too broadly."). For example, tenants may root for their favorite sports team while watching a game, while a tenant or another occupant may then have a conversation with a friend outside, and the Ordinance could deem both as "verbal disturbances." In fact, the "responsible party" need only receive one citation for a "verbal disturbance" because any "combination of" violations under §10-708(g) will be considered in the "frequent response" calculus for that residence. §10-708(g). Recently, news reports explained that the City code enforcement officers targeted a "substandard" housing unit for code violations because of the number of police and firefighter calls.[11] Now the Ordinance will expand who will be responsible for these violations and create joint and several liability with any "responsible party." The Ordinance raises serious concerns regarding why the Ordinance now expands liability to low-income tenants who, under the Ordinance revisions, would also be responsible for clear failings to those individuals.

Tenants and occupants can be cited for "making or continuing, or causing to be made and continued, of any loud, unnecessary or unusual noise which disturbs the peace and quiet of the neighborhood." §10-708(e). The Ordinance's ban on loud noises at all times is unconstitutional. *See In re Brown*, 9 Cal. 3d 612, 620 (1973) (reasoning "the manner limitation, 'loud,' is so broad

[11] "Fresno code enforcement targets substandard housing", Fresno Bee, Jan. 2016, *available at* http://www.fresnobee.com/news/local/article56888673.html.

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as to amount to a total prohibition on loud public speech."). Additionally, the term "unnecessary or unusual noise" is likely unconstitutionally vague. *See Jim Crockett Promotion, Inc. v. City of Charlotte*, 706 F.2d 486, 489 (4th Cir. 1983) (ordinance prohibiting "unnecessary noise" held unconstitutionally vague.). For example, individuals playing music that residents have never heard could be considered "unusual or unnecessary" with this broad definition. Indeed, the Ordinance's description of "unusual or unnecessary noise" invites many similar hypothetical applications which render the Ordinance unconstitutionally overbroad. No person can have adequate notice as to what an "unnecessary or unusual" noise is under the Ordinance.

The Ordinance's failure to narrowly and clearly define the prohibited conduct increases the likelihood that such a law will be applied in an unfair and discriminatory manner. It is well established that in addition to providing notice of what conduct is prohibited, laws must be drafted "in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). For example, uncharged nonviolent criminal acts are punishable under the Ordinance. §10-708(g)(2).

Without expending exorbitant amounts of time and money, discriminatory Ordinance enforcement is inevitable. It is predictable that its enforcement will be very selective and based on subjective gut reactions of police officers and other City administrators for which tenants, occupants, and other responsible parties should be targeted, and which people have "constructive or actual knowledge" of any of these violations.

The lack of specificity in the Ordinance's description of conduct which may be used to cite tenants, occupants, and other "responsible parties" jointly is highly susceptible to abusive, arbitrary, and discriminatory enforcement.

II. There are significant enforcement concerns regarding "responsible party" obligations.

Second, the Ordinance states that the citation will list the name of persons conducting the activity, but it fails to differentiate which activity or which "responsible party" will be cited if there are multiple violations by different individuals. The Ordinance does not clarify the process for attributing Ordinance violations to multiple responsible parties. For example, if a tenant just moved to the residence, and receives an Ordinance violation, but another "responsible party" already has calls attributable to the residence, is the new resident potentially liable or subject to a lower threshold of liability based on the residence's prior history? The Ordinance then requires owners to track down and find any other person who is also considered a "responsible party." §10-709. However, because each party is jointly and severally liable, indeed the most likely person who conveniently may receive the notice from the owner is the tenant, regardless of their actual role in the Ordinance violation.

Further, a tenant who happens to be more readily accessible should not be forced to pay fines and potentially legal fees because of convenience. The implications of enforcement raise

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serious concerns with any "responsible party" paying fees for a violation they may have not committed and the obvious challenges in recovering any or all of those fees are of deep concern.

III. The Ordinance revisions undermine law enforcement and hurt domestic violence victims.

Third, the Ordinance undermines law enforcement efforts by penalizing calls for help. The proposed Ordinance can punish any person habitually causing a "juvenile or domestic disturbance" "call." §10-708(g)(5). This Ordinance will disproportionately impact victims of domestic violence who may feel forced to remain silent in fear of the severe penalties the City seeks to enforce.

As a result, this Ordinance raises serious First Amendment and due process concerns of suppressing truthful reporting of domestic violence activity. A person who may consider calling the police to report domestic violence may now refrain in fear of the City's repercussions for truthfully reporting domestic violence. Under the Ordinance, the City would track these calls, not necessarily to help victims, but to potentially force them to pay up to $50,000. This Ordinance runs counter to the purpose of domestic violence accountability structures. Given the high number of domestic violence cases in California, cities should focus on providing services to victims of abuse, rather than diminishing their victimization with severe fines and threat of legal proceedings.

IV. The Ordinance contravenes fair housing obligations related to victims of domestic violence.

Lastly, the U.S. Department of Housing and Urban Development (HUD) has made clear that policies may not violate the Fair Housing Act's prohibitions based on protected categories, including race and gender. The proposed expansion of the Ordinance undermines state and federal fair housing laws protecting among others immigrants, families with children, and other low-income people and families. HUD stated that "Victims are often evicted after repeated calls to the police for domestic violence incidents because of allegation of disturbance to other tenants."[12] The proposed Ordinance would similarly undercut the meaning of the Fair Housing Act because victims could be fined up to $50,000 for reporting domestic violence or potentially for other vague reasons such as "unnecessary or unusual noise."

For survivors of domestic violence, disorderly or crime-free ordinances such as the proposed Ordinance endanger those victims and violates Fresno's commitment to fair housing. The Ordinance exacerbates these issues by discouraging victims to report cases of domestic violence.

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We recognize the adverse impacts of blight and other community needs. However, for the reasons set forth above, we believe these revisions have not been properly vetted to make a judicious decision with a critical eye to areas of concern. We urge you not to enact this law which will adversely impact some of Fresno's most vulnerable residents and which is inconsistent with the fundamental principles of fairness and due process in our system of justice.

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May 11, 2016

VIA FACSIMILE AND ELECTRONIC MAIL

Clint Olivier
Council Member
Fresno City Council
2600 Fresno St
Fresno, CA 93721

RE: Proposed Nuisance Ordinance, Chapter 10, Article 7, §§10-701 – 10-716 of the Fresno Municipal Code

Dear Councilmember Clint Olivier:

We are writing to express our concerns regarding Fresno's proposed revision to the Nuisance Ordinance, to be discussed at the May 12, 2016 City Council meeting. We understand that the proposed Ordinance is being introduced as a result of a concern by residents and City officials about blight and crime in the City. However, the Ordinance is riddled with vague and overly broad language which chills basic constitutional freedoms. As it is unclear whether the City has reviewed the proposed revisions with a deep analysis, the likely result of these changes will target the City's most vulnerable residents.

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