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Dear Narragansett Town Council Members:

I understand that next week the Council will be considering second passage of a proposed ordinance allowing the Town to recover "police response costs" in responding to sites of alleged "disturbances" in the community. The ACLU wishes to express its strong objection to this proposal – which appears to be the latest in the Town's continuing, and increasingly draconian, actions aimed at students and landlords.

Before examining this particular proposal, it is first important to note the numerous ordinances the Town Council already has enacted in recent years – dealing with noise, disorderly conduct, public drinking of alcohol and, of course, the infamous orange stickers – to deal with the issues that this ordinance is also aimed at. If all these current laws are truly insufficient to address the problems they are designed to remedy, we suggest the Council consider the possibility that perhaps the approach itself is flawed, and that piling on even more punitive measures will be no more successful.

Leaving specifics aside, the ACLU also fundamentally disagrees with the underlying premise of this ordinance: that special costs should be imposed on residents to **re-pay** police simply for doing the job they are already getting paid to do. If a person is violating the law, including engaging in conduct that violates any of the innumerable town ordinances relating to disorderly conduct, there are financial and other penalties already associated with those violations. That is the proper way for the Town to address the issue. However, this new proposal not only requires residents to pay the Town merely for the privilege of being charged with a disorderly conduct offense, it requires them to pay regardless of whether they are actually even charged with a crime. Rather, if a police officer decides that a "disturbance" of some sort has taken place, he or she has the unilateral power to issue a warning that police costs will be charged the next time a police response to the residence is made.

Let's be clear: an ordinance like this will not deter people from committing disorderly conduct, since numerous laws already prohibit these activities and carry significant penalties. All this ordinance does is turn alleged disturbances of the peace into a fundraising activity for the Town. In fact, in some instances, it creates a perverse incentive – in light of the fiscal incentive for the Town's coffers, it will now be in the Town's interest to encourage people to complain to the police about disturbances that do not rise to the level of criminal conduct. One can also see this ordinance being used to escalate neighborhood feuds. When one party knows that by merely calling the police about a "disturbance," he or she can ensure that their neighbor will be left with a hefty bill to pay, the incentive will sometimes be great to do so.

On the other hand, in some key instances, this proposal may actually deter the reporting of crimes that *should* be reported. One can easily imagine, for example, victims of domestic violence thinking twice before picking up the phone to call the police, knowing that by doing so, they might find themselves responsible for paying a bill for the police response or, just as problematic, creating a situation for their landlord who will also be on the hook for paying the police and will therefore not look kindly on the victim's plight. This is intolerable. And where does it end? Once one accepts this premise, surely it is not too long before victims of house fires start getting billed by the fire department when firefighters respond to do their job too.

In some respects, this proposal is even more troubling than the Town's "orange sticker" ordinance. In upholding that ordinance, the Court of Appeals at least placed some limitations on its use, which appear to be missing here. For example, in a crucial part of its ruling, the court clarified that "the prosecution most prove that a gathering creating a substantial disturbance involving a violation of law occurred both at the time of the initial posting and when the subsequent intervention took place. Police intervention at a residence is not enough, by itself, to establish an Ordinance violation." No such limitation is present here. Indeed, it appears that the ordinance is specifically designed to do what the court said *could not* be done with the sticker ordinance.

The ordinance's definitions are about as broad as can be. The definition of what constitutes a "disturbance" does not, as noted above, require that any charges be filed. If a police officer responds to a call about any "disturbing or loud noise or sound" or "any conduct which disrupts the peace and quiet of a neighborhood," among other things, the officer can issue a warning. It appears to be completely within the discretion of the responding officer to decide whether a "disturbance" occurred. Further, the purported appeal process contained in the ordinance – which occurs only after costs have been imposed, and thus provides no opportunity whatsoever for contesting the validity of the original warning – is also completely arbitrary, providing no standards at all for the Town to use in determining whether to uphold or void a response cost charge.

Just as broad is the definition of "responsible party," which encompasses all people owning or leasing the property, as well as those participating in the disturbance itself. By imposing joint and several liability on all these parties, the ordinance casts the widest possible net and creates a nightmare for individuals caught up in the ordinance's enforcement. Further, as we read the proposal, there is no requirement that the persons deemed "responsible parties" for purposes of the warning also be the same parties responsible for the "disturbance" leading to the imposition of costs. To the contrary: Section 46-53 provides that once a warning is issued to "responsible parties," all of them are jointly and severally liable for all responses taking place thereafter. In short, in true Orwellian form, "responsible party" is defined to include people who are clearly not responsible. By requiring imposition of costs after only two incidents have taken place over the course of a year, this ordinance ensures that innocent people will be forced to pay.

Perhaps the breadth of the ordinance is best exemplified by Section 46-52(A), which states that "No Responsible Party shall cause, permit or tolerate a Disturbance as defined herein." Since a "responsible party" is defined in part as a person who organizes or participates in a disturbance, this provision essentially bars people allegedly participating in a disturbance from permitting a disturbance!

We recognize and appreciate the frustration that some people may have about disorderly activities taking place in their neighborhoods. This is a legitimate problem, but it is not unique to Narragansett, and certainly not unique to Narragansett as a neighbor "university town." At some point, the Town must realize that its continued focus on punitive measures is counter-productive. Piling additional penalties onto offenses that are already illegal only creates additional problems, puts innocent people at risk of punishment, may discourage the proper use of the police and, ultimately, sets a poor precedent in requiring town residents to pay for a service that they are already paying for. We urge the Council to reject this ordinance.

Sincerely,

Steven Brown
Executive Director

cc: Grady Miller, Town Manager
Dean Hoxsie, Police Chief