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Narragansett Town Council
25 Fifth Avenue
Narragansett, RI 02882

BY EMAIL

Dear Town Council Members:

This letter is a follow-up to one we sent you last month regarding the Council's consideration of various revisions to its zoning and housing ordinances, responding in part to recent changes in state law.

We have only just had a chance to review your agenda for tonight's meeting where many of these items are once again up for review and consideration. At first glance, it appears that two of our prior recommendations — addressing the size of fines that can be imposed on violators and questioning the inclusion of a new category of "boarding home" — have been favorably received, for which we express our appreciation.¹

At the same time, a revised version of the town's "unruly gathering" ordinance (also known as the "orange sticker" ordinance) is of great concern. We recognize that, over a decade ago, a court ruling determined that the current ordinance was not *facially* unconstitutional based on arguments that the posting of an orange sticker without a hearing deprived owners of procedural due process, and that the ordinance interfered with First Amendment freedom of association on "overbreadth" grounds. But in no respect did the court in that case purport to uphold the ordinance (as then presented) as impervious to all constitutional attacks. To the contrary, the court made clear that the law raised serious issues that were potentially subject to legitimate challenges in its *application*.² We believe that the proposed changes to the ordinance being considered at tonight's meeting go even further and raise deeply serious constitutional concerns if, and when, it is enforced against individuals and businesses. They are concerns that the earlier court ruling provides no defense against.

Under the current ordinance, when police arrive at a house where a "public nuisance" involving a violation of the law is taking place, the premises are tagged with an "orange sticker" notice and both the landlord and tenants become subject to liability should another "nuisance" occur. Under the proposed revisions, however, both the landlord and tenant would be *automatically* liable for violating the ordinance *at the first instance*. The proposal further rescinds a provision in the current ordinance recognizing that individuals cannot be held accountable for

¹ However, we did not find any movement by the Town to repeal two current ordinances that now clearly violate the General Assembly's actions this year relating to the number of "unrelated" people who can make up a household.

² *URI Student Senate v. Town of Narragansett*, 631 F.3d 1 (1st Cir. 2011).

the unforeseeable conduct of tenants or guests, and goes on to provide for an automatic one-year revocation of the landlord's rental registration certificate for a second offense.

We believe that, if these changes are approved, individuals and businesses cited under the ordinance will have strong grounds to challenge the ordinance's constitutionality once enforced. Whether it is a party or a political meeting, neither a tenant nor a landlord should find themselves involuntarily legally liable for the errant misconduct of a guest. Nor do we believe that the Town can essentially take a landlord's property for a year, which is the crux of the automatic rental registration revocation for second offenses, when the landlord may have had no ability to control the alleged misconduct prompting this severe penalty.

The ACLU of Rhode Island therefore strongly urges you to reject these proposed revisions to the "unruly gathering" ordinance. It is troubling enough as it currently stands; efforts to further hold individuals and businesses responsible for activity well beyond their control is inappropriate, unnecessarily punitive, and constitutionally problematic.

We thank you once again for considering our views.

Sincerely,



Steven Brown
Executive Director



Lynette Labinger
ACLU/RI Cooperating Attorney

cc: James Tierney, Town Manager
Janet Tarro, Town Clerk
Mark Davis, Town Solicitor
Wayne Pimental, Building Official