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Via E-mail (vandling449@yahoo.com)

July 15, 2013

Vandling Borough Council
634 Main Street
Forest City, PA 18421

**Re: Proposed Neighborhood Preservation & Disruptive
Conduct and Nuisance Abatement Ordinance**

Dear Vandling Borough Council Members:

The American Civil Liberties Union of Pennsylvania, the Barbara J. Hart Justice Center, and the Pennsylvania Coalition Against Domestic Violence write this letter to caution the Borough of Vandling against passing the current draft of the "Borough of Vandling Neighborhood Preservation & Disruptive Conduct and Nuisance Abatement Ordinance." Although the Borough aims to address legitimate concerns in protecting the "health, safety, and welfare" of its citizens from "blighting and deteriorating" neighborhood conditions, provisions of the proposed ordinance violate the First and Fourteenth Amendments to the U.S. Constitution; Article 1, Section 20 of the Pennsylvania Constitution; the Fair Housing Act of 1964; and the Pennsylvania Human Relations Act and could thus subject Vandling Borough to costly and time-consuming litigation. Accordingly, we ask that you either reject the ordinance as proposed or revise it significantly to avoid infringing upon the constitutional rights of tenants.

**The Proposed Ordinance Violates the United States and Pennsylvania
Constitutions.**

The proposed Ordinance would interfere with tenants' rights to petition the government, in violation of the First Amendment to the U.S. Constitution and Article 1, Section 20 of the Pennsylvania Constitution. The First Amendment to the U.S. Constitution guarantees "the right of the people ... to petition the government for a redress of grievances," including the right

to seek assistance from law enforcement.¹ Federal courts have found strong public policy concerns in “ensuring the free flow of information to the police,” as “it would be difficult indeed for law enforcement authorities to discharge their duties if citizens were in any way discouraged from providing information.”² Additionally, Article 1, Section 20 of the Pennsylvania Constitution confers upon the citizens of Pennsylvania the ability to “apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address, or remonstrance.” As you know, Section 114-6(C) of the Ordinance deems “three (3) or more incidents requiring a response of the Police Department or Code Enforcement Officer and occurring within a calendar year” an unlawful nuisance. Once a property is declared a nuisance, the Code Enforcement Officer is authorized to secure the property to abate the nuisance and/or suspend or revoke the rental license for the property. Section 114-14. Either of those actions will necessarily result in the eviction of tenants from their home, even where the tenant is the victim, and not the perpetrator, of criminal activity. As a result, these sections, if enacted, would strip tenants of their constitutional right to petition the government and effectively punish tenants for contacting law enforcement officers by subjecting them to eviction from their homes for doing so.

The proposed Ordinance would also violate tenants’ rights to procedural due process under the Fourteenth Amendment to the U.S. Constitution. Under the proposed Ordinance, landlords’ rental licenses are subject to suspension or revocation if their tenants engage in any of the conduct listed under Section 114-6 (including requiring police assistance at their residence three times during a calendar year). But the Ordinance provides no opportunity for tenants to challenge the determination that they have engaged in the alleged conduct. Indeed, the Ordinance specifies that a conviction for the conduct described in Section 114-6 is not required. Thus, the Ordinance would require a landlord to evict a tenant whose conduct is alleged to constitute a nuisance under the Ordinance even though the tenant has had no opportunity to present evidence that he or she did not engage in the alleged conduct. Such a result would violate the tenant’s Fourteenth Amendment rights by depriving the tenant of property without due process of law.³

¹ See, e.g., *Ottensmeyer v. Chesapeake & Potomac Telephone Co. of Maryland*, 756 F.2d 986, 994 (4th Cir. 1985); *Forro Precision, Inc. v. Int’l Business Machines Corp.*, 673 F.2d 1945, 1060 (9th Cir. 1982).

² *Forro Precision, Inc.*, 673 F.2d at 1060; see also *William Villa v. Heller*, 885 F. Supp. 2d 1042, 1049 (S.D. Cal. 2012).

³ See, e.g., *Soldal v. Cook County*, 506 U.S. 56, 61 (1992) (holding that a seizure occurs when “there is some meaningful interference with an individual’s possessory interests in that property”); *Berrios v. Lancaster*, 798 F. Supp. 1153, 1157 (E.D. Pa. 1992) (holding that a leasehold is a property interest under Pennsylvania law).

The Nuisance Provision of the Proposed Ordinance Will Violate Federal and State Fair Housing Laws If Applied to Victims of Domestic Violence.

By declaring properties to which the police respond three times in one year to be nuisances, the proposed Ordinance would also have a detrimental impact on victims of domestic violence by deterring them from seeking assistance during times of abuse due to a fear of losing their homes. Because the overwhelming majority of domestic violence victims are women, policies and practices that discriminate against or otherwise adversely affect victims of domestic violence have an unlawful disparate impact on women.⁴ Title VIII of the U.S. Civil Rights Act of 1964 (the Fair Housing Act), 42 U.S.C. §§ 3601 et seq., and the Pennsylvania Human Relations Act (PHRA), 43 P.S. §§ 951-963, prohibit actions based on gender stereotypes or animus, or those actions that have a disparate impact on women, including discrimination in rental housing based on sex. Enforcement of the proposed ordinance against victims of domestic violence would infringe on their right under federal and state law to be free from sex discrimination,⁵ as such enforcement would have a disparate impact on women.⁶ While we are confident this is not the intent of the Borough of Vandling, fair housing laws do not require such intent; disparate impact based on an individual's sex is sufficient to trigger the protections in these Acts. Because enforcement of the nuisance ordinance's provision penalizing tenants for police responses to their properties would discourage victims of domestic violence from reporting future crimes that might be committed against them, the ordinance would unlawfully restrict their ability to exercise their constitutional rights and violate their rights under federal and state law to be free from sex discrimination.

⁴ See Jennifer L. Truman, Criminal Victimization, 2010 10 (2011), available at <http://www.bjs.gov/content/pub/pdf/cv10.pdf> (explaining how women are more than four times likely than men to experience intimate partner violence).

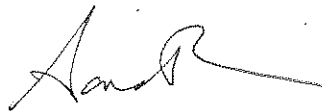
⁵ See, e.g., *Meister v. Kansas City Housing Auth.*, 2011 WL 765887 (D. Kan. 2011); *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 678 (D. Vt. 2005).

⁶ See U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA)* 2 (2011), available at <http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf>; Brief for American Civil Liberties Union et al. as Amici Curiae Supporting Respondents, *Magner v. Gallagher*, 619 F.3d 823 (8th Cir. 2010) (No. 10-1032), 2012 WL 362806, at *22-34 (U.S. 2012) (discussing section entitled "Disparate Impact Analysis is a Crucial Tool for Stopping Housing Discrimination Against Domestic and Sexual Violence Victims").

The ACLU-PA, the ACLU Women's Rights Project, and the law firm Pepper Hamilton LLP are currently representing a tenant in Norristown, Pennsylvania, who is challenging a similar ordinance that imposes criminal fines on landlords when police respond to disorderly behavior at their properties.⁷ Our client in Norristown was threatened with eviction after police were called to her home to respond to incidents of domestic violence. She has claimed, among other things, that the Norristown ordinance chills her from exercising her right to contact the police for help. If enacted, the proposed Ordinance would have the same chilling effect on tenants in Vandling, including domestic violence victims, and could deter Vandling residents from contacting the police when they need their assistance.

For all of these reasons, we ask that you either reject the proposed Neighborhood Preservation & Disruptive Conduct and Nuisance Ordinance or revise it to ensure that it does not infringe on the constitutional rights of tenants in the Borough. You may contact Sara Rose at (412) 681-7864 if you have any questions or wish to discuss our constitutional objections to the ordinance further. Thank you for your consideration of our concerns.

Sincerely,



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ACLU of Pennsylvania

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Cc: David Bianco, solicitor, *via facsimile* (570) 785-9061

⁷ See *Briggs v. Norristown*, No. 2:13-cv-2191 (E.D. Pa.).