



August 21, 2018

Re: Oxford, MS – Proposed Ordinance Chapter 14, Article IV, 14-100 to 14-103 - Regulation and Safety of Patrons and Employees of Restaurants, Bars and Similar Businesses, Including Event Venues

Dear Alderman,

We hope you are well and write to you about Oxford's proposed ordinance ("Ordinance"), set for vote tonight, August 21, 2018. We have been made aware of this proposed ordinance and strongly oppose it. Due to the specific provisions of 14-103 and the imposition of mandatory camera surveillance systems, we believe the Ordinance poses a serious threat to the constitutional rights of Oxford's citizens and UM students, including but not limited to, the right to privacy and freedom of association. There is also the threat of governmental abuse in regards to these security measures. As you know, the Ordinance requires "covered businesses" to, *inter alia*, maintain complex surveillance systems and, in one business' case, pay a \$75 processing fee for every hosted event. Oxford, Miss., Proposed Ordinance Sec. 14-100 to 14-103. Any violation of the Ordinance is considered a misdemeanor and a violator "may be fined a minimum of \$250.00 and up to a maximum of \$1,000.00 and/or sentenced to serve up to six (6) months in the county jail." *Id.*

We are especially concerned that one section of the Ordinance appears to be specifically targeted at an Oxford business known for its events sponsored by and for Oxford's black students and citizens. In the Ordinance, any business operating under Mississippi Code Annotated 67-1-5 (m)(ii), defined as "event venues," must notify the police chief five (5) days in advance of the event and pay a \$75 dollar processing fee per event. *Id.* at 14-103. In reviewing the notice, the Police Chief, or a designee, may impose certain limitations or additional safeguards at his/her discretion. *Id.* These limitations can include, *inter alia*, time restrictions and a general "other requirements" the Police Chief, or a designee, deems necessary in light of "specific, articulable health or safety concerns." *Id.* The Ordinance fails to establish what the processing fee's purpose is, nor does it describe what is actually being "processed."

While this section seems neutral on its face, we have been informed that only one such Oxford business operates under Mississippi Code Annotated 67-1-5 (m)(ii), and it is the business that hosts events predominantly sponsored by and for black Oxford students and citizens. Surely, you can understand the racial implications this section presents. Passing an ordinance such as this can have not only serious legal repercussions, but also it is a bad look for the city of Oxford and can have dire repercussions for the University of Mississippi and its current and prospective students. The five (5) day notice and \$75 processing fee will place an immense and unnecessary burden on an establishment, whose only form of business is to host events. That business could potentially be required to give notice, and pay the fee, every single day of the week. The Police Chief will essentially have the authority to

AMERICAN CIVIL
LIBERTIES UNION OF
MISSISSIPPI
P.O. BOX 2242
JACKSON, MS 39225
T/601.354.3408
F/601.355.6465
WWW.ACLU-MS.ORG

determine when and how these events will take place, including placing time limitations on them and the imposition of additional security. The Police Chief could place any number of restrictions if he/she “deems” it necessary for public safety.

As noted above, Section 14-103 is especially egregious (and illegal) if this burden is imposed on an establishment simply because it hosts events mainly for black citizens and students. This seems to be the case, because a source with knowledge of the situation informed us that the reason the Ordinance was proposed was an incident involving a breach of security at the event venue in Oxford. The incident occurred when an uninvited person discharged a firearm into the ceiling at the event venue. No one was injured and the situation was controlled, with procedures put in place to ensure that a similar type of incident would not happen again. However, the mayor and police chief arrived at the event venue after the incident and berated the venue management for their “poor judgment in having ‘this kind of event.’” The event in question was a gathering of a coalition of black Ole Miss Student groups, which was held the prior two years without incident. The source claims the mayor, in the days following the incident, vowed to have an ordinance that, among other things, constrained the event venue. If this is true, Section 14-103 of the Ordinance has a very clear discriminatory purpose, and is in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Supreme Court has held that a law, while neutral on its face, can be deemed unconstitutional if it is motivated by a discriminatory purpose. *Crawford v. Bd. Of Educ. Of the City of Los Angeles*, 458 U.S. 527, 544, 102 S.Ct. 3211, 73 L.Ed.2d 948 (1982); *Washington v. Seattle Sch. Dist. No 1*, 458 U.S. 457, 102 S.Ct. 3187, 73 L.Ed.2d 896 (1982). In several cases, Courts have invalidated government action (e.g. ordinances, boundaries, convictions) when it was racially motivated.¹ That seems very evident here considering: 1) the words and actions of the mayor 2) only one business is affected by Section 14-103 and 3) the one business affected is the event venue that predominantly hosts events sponsored by and for black students and citizens.

There is also the matter of the imposition of mandatory, and complex, camera surveillance systems for any “covered business.” These are businesses required to obtain a license for the sale or distribution of alcohol, businesses that lease or rent their facilities to other individuals and businesses, or entities that are required to obtain a permit for the sale and distribution of alcohol and which allow on-premises consumption. Oxford, Miss., Proposed Ordinance Ch. 14, Article IV: Purposes and Applicability. The digital cameras must be high quality and have low-light capabilities. Oxford, Miss., Proposed Ordinance Sec. 14-100. The camera systems

¹ Gomillion v. Lightfoot, 364 U.S. 339, 341 (1960) (invalidating oddly shared boundary drawn around the city of Tuskegee as motivated by race); Hunter v. Erikson, 383 U.S. 386, 391 (1969) (invalidating housing ordinance that placed a “special burden” on racial minorities). Indeed, some of the first Equal Protection cases concerned discriminatory enforcement of the laws. See Yick Wo v. Hopkins, 118 U.S. 356 (1886) (invalidating conviction of a Chinese national prosecuted in a pattern of discriminatory enforcement of a San Francisco ordinance concerning laundries).

must essentially monitor every area where a customer or patron may be. *Id.* The Police Chief, or a designee, has authority to determine additional locations that businesses will be required to have cameras, and the affected business may appeal that determination. *Id.* They must be sufficient to identify individuals, and must provide clear observation of patrons and their activities. *Id.* The Police Chief, or a designee, has authority to “periodically” inspect cameras and sample footage to ensure compliance. *Id.*

Abiding by these requirements would be extremely expensive for businesses in Oxford. Some of them are very large, and therefore, would require many cameras, both interior and exterior, to comply with the Ordinance. This section of the ordinance also essentially amounts to government surveillance. The police chief, or a designee, has the authority to require additional cameras and determine the locations of those cameras. The business may appeal that determination, but the Ordinance offers no process or procedure that would govern such appeal under Article IV. There also seems to be no restrictions on who the police chief may designate in his place, implying anyone can be a designee. In addition, allowing “periodic” inspection of footage leaves the door wide open for illegal government surveillance and discriminatory abuse. The language in the Ordinance stating that the cameras must be “sufficient to identify individuals” and to “provide clear observation of the premises and activities by patrons” undoubtedly reveals that the Oxford Police Department intends to use the camera systems as their own surveillance in investigations and use the footage as evidence.

The Supreme Court recognized, in *NAACP v. Alabama*, that the ability to freely associate includes the right to do so without revealing one’s identity. Nat’l Ass’n for Advancement of Colored People v. State of Ala. ex rel. Patterson, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958). Also, Numerous studies have concluded that video surveillance is not effective in reducing crime. The City of Chicago spent over \$60 million of taxpayer’s dollars on 10,000 surveillance cameras and it has not been proven to conclusively deter or reduce crime.”² A study by USC showed that Los Angeles’ camera network made no statistically-significant impact on reducing violent crime, property crime, or quality of life crime, such as prostitution or public drunkenness.³ In Oakland, Calif., Police Chief Joseph Samuels, Jr. concluded that “...there is no conclusive way to establish that the presence of video surveillance cameras resulted in the prevention or reduction of crime.” Passage of this ordinance and, therefore, the implementation of complex surveillance systems, will most likely prove to be very costly and very ineffective.

² Chicago's Video Surveillance Cameras: A Pervasive and Unregulated Threat to Our Privacy. ACLU of Illinois, Feb. 2011, http://dig.abclocal.go.com/wls/documents/Surveillance_Camera_Report.pdf

³ Aundreia Cameron et al., Measuring the Effects of Video Surveillance on Crime in Los Angeles, at 29-30 (University of Southern California, May 5, 2008)

This Ordinance poses imposes unnecessary burdens on businesses by codifying costly and historically ineffective surveillance requirements, and it imposes serious threats to constitutional rights, including but not limited to, isolating and specifically targeting a business that traditionally hosts events sponsored by and for black Oxford citizens and students. For the reasons stated above, among others, The ACLU of Mississippi urges you to oppose the passage of this Ordinance and vote no this evening.

Sincerely,



Joshua F. Tom
Legal Director
ACLU of Mississippi
jtom@aclu-ms.org
Phone: (601) 354-3408



Landon Thames
Staff Attorney
ACLU of Mississippi
lthames@aclu-ms.org
Phone: (601) 354-3408

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