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Civil Rights Groups File Lawsuit Challenging Constitutionality of Oakland Public Housing Loitering Ordinance

Complaint claims the Oakland Ordinance has been used by Oakland Housing Authority Police Department to harass and intimidate public housing residents

OAKLAND, CA — The Lawyers' Committee for Civil Rights of the San Francisco Bay Area, in partnership with the ACLU Foundation of Northern California, East Bay Community Law Center, the Ella Baker Center for Human Rights, and King & Spalding LLP, today filed a complaint in United States District Court, Northern District of California, challenging the constitutionality of the Oakland Public Housing loitering ordinance. The lawsuit against the City of Oakland and the Oakland Housing Authority Police Department (OHAPD) asserts that the loitering ordinance violates due process, and that OHAPD has been using the ordinance to harass and intimidate public housing residents.

"The OHAPD is unduly criminalizing public housing residents," said Elisa Della-Piana, Legal Director of the Lawyers' Committee for Civil Rights of the Bay Area. "Loitering laws have been used for decades to restrict people of color's movement in public spaces and their free exercise of civil rights. These laws have been widely criticized and struck down in many other cities."

OHAPD is a supplemental police force that has 34 sworn officers dedicated to policing more than 16,000 households living in public, affordable housing. Facts and incident reports gathered to date reveal OHAPD enforces the loitering ordinance through threats, citations, and reported lease violations that are placed in residents' tenant files and threaten their ability to remain in public housing. In addition, because any violation of the loitering ordinance constitutes a criminal infraction, it is punishable by a fine of up to \$250. When combined with additional civil penalties that are often assessed for untimely payment, the amount owed for a loitering infraction can reach over \$700.

"The ordinance is unconstitutional on its face, and it is being used as justification for police intrusion into the everyday lives of Oakland public housing residents," said Shilpi Agarwal, Staff Attorney for the ACLU Foundation of Northern California. "These residents are being subjected to over-policing and intimidation in their own homes and neighborhoods."

The complaint was filed on behalf of plaintiffs Darren Mathieu and Edward Jackson. Mathieu has been a resident of the Oakland, California, apartment complex, Lockwood Gardens, for over 20 years. The complex is owned by the Oakland Housing Authority (OHA). Mathieu believes that he has been stopped

more than 70 times by the OHAPD in the last several years. Although he has never been issued a citation for any actual wrongdoing, he has been handcuffed, asked to show ID, and several of these stops have been recorded by OHAPD in “incident reports” that were then reported to OHA as lease violations. In these incident reports, “loitering” is referenced repeatedly as the basis for reporting Mathieu. Edward Jackson, now a resident of Hayward, California, lived in the Lockwood complex as a child. Because he has family members who continue to reside there, Jackson visits Lockwood frequently, has many friends there, and feels connected to the community. Jackson currently has an outstanding citation for violating the loitering ordinance and purportedly owes \$785 under this citation.

“OHAPD’s unlawful enforcement of the loitering ordinance puts residents’ housing at risk,” said Joshua Toll, Partner and Head of Pro Bono at King & Spalding. “These stops and incidents lead to the loss of subsidized housing, homelessness, family disruption and community instability. The loitering ordinance’s vague language, which invites arbitrary and overly aggressive enforcement, is leading to these harms.”

According to the lawsuit, the loitering ordinance violates the Due Process Clause of the 14th Amendment of the U.S. Constitution because it fails to put residents on notice of what conduct is prohibited, and because it gives law enforcement officers unlimited discretion to determine what constitutes a violation. The lawsuit also alleges that the over-policing based on the loitering ordinance has violated the residents’ Fourth Amendment rights to be free from unreasonable search and seizure. The groups are therefore asking a federal court to declare the ordinance unconstitutional, and are also seeking an injunction to stop OHAPD from enforcing the Loitering Ordinance.

“The East Bay Community Law Center has counseled numerous tenants living in Oakland Housing Authority properties over the years, and safety is of the utmost importance to them,” said Meghan Gordon, Housing Program Director at the East Bay Community Law Center. “Many OHA residents have told us that OHAPD’s presence has not made them feel more secure in their homes. Instead, OHAPD’s over-policing creates an atmosphere of fear for the residents, with the constant threat of police stops, meritless citations, and unjust eviction lawsuits hanging over them and their family members.”

The OHAPD was created to supplement the efforts of the Oakland Police Department (OPD). However, OHAPD officers do not provide full-service policing to the residents of OHA property, and OPD remains the primary law enforcement agency in the City of Oakland. Many cities across the country have eliminated their public housing authority police forces—Oakland has maintained theirs.

ABOUT THE LAWYERS’ COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA

Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, founded in 1968, works to advance, protect, and promote the legal rights of communities of color, low-income persons, immigrants, and refugees. Assisted by hundreds of *pro bono* attorneys, Lawyers’ Committee provides free legal assistance and representation to individuals on civil legal matters through direct services, impact litigation, and policy advocacy. For more information, visit www.LCCR.com. On Twitter [@lccrbayarea](https://twitter.com/lccrbayarea).

ABOUT THE ACLU FOUNDATION OF NORTHERN CALIFORNIA:

The American Civil Liberties Union of Northern California has been a guardian of justice, fairness, equality and freedom, working to protect and advance civil liberties for all Californians. For more information: <https://www.aclunc.org>.

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The East Bay Community Law Center was founded in 1988 – as the Berkeley Community Law Center – by law students from UC Berkeley’s Boalt Hall School of Law. The EBCLC works to promote justice by providing legal services and policy advocacy that are responsive to the needs of low-income communities, and provide law training that prepares future attorneys to be skilled and principled advocates committed to finding innovative solutions to the cause and conditions of poverty. EBCLC is one of the largest providers of free legal services in the East Bay, and Berkeley Law’s largest clinical offering. For more information, visit <https://ebclc.org/>.

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