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EQUAL HOUSING & OPPORTUNITY COUNCIL

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*Working to ensure equal access to housing and places of public accommodation for all people*

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September 22, 2015

Honorable Pat Dolan, Chairman  
And Members of the St. Louis County Council  
St. Louis County Council  
Government Center  
Clayton, MO 63105

Re: Residential Rental Property Licensing Code (Substitute Bill No. 1 for Bill No. 204, 2015)

Members of the St. Louis County Council:

The Metropolitan St. Louis Equal Housing & Opportunity Council (“EHOC”) submits this statement in opposition to the creation of a Residential Rental Property Licensing Code (Substitute Bill No. 1 for Bill No. 204, 2015). EHOC is a nonprofit organization dedicated to ending housing discrimination in the St. Louis area. We believe that this proposed code, while well intentioned, will have substantial negative, and potentially discriminatory, effects for tenants and vulnerable populations in St. Louis County.

The proposed Rental Property Licensing Code (“the Code”) requires residential rental property owners obtain licenses on an annual basis or prior to offering rental property. Failure to obtain and maintain a valid residential rental license results in revoking all occupancy permits issued for all properties of such owner. Further, the Code states that a property owner’s license may be suspended or revoked if a property is found to be out of compliance with the Property Maintenance Code and not brought into compliance within thirty days, if an owner makes false statements on the application or fails to report a change of occupancy under the license, or if three or more acts of ‘public nuisance’ by occupants at any of the owners properties are reported to the landlord. Additionally, the bill requires an owner to evict his tenants if he is informed that an occupant or occupants have been convicted of a misdemeanor, felony, or ordinance violation of certain enumerated offenses regardless of where the offense occurred. This could require the

eviction of entire families which would include relatively minor criminal offenses occurring away from the property, like minor in possession (MIP).

EHOC is concerned about the proposed ordinance for the following reasons:

### **1. Threatens the Supply of Affordable Rental Housing in St. Louis County**

The ordinance requires a landlord to have a license in order to lawfully rent out his properties. This certificate can be suspended or revoked for a number of reasons that have nothing to do with whether a property presents an immediate safety risk to its residents or to the surrounding community. For example, a landlord may lose his license based on his failure to pay monies owed to the City, based on any three “public nuisances” regardless of the seriousness or duration of the violations, or based on a tenant’s conviction of even a single violation of any county ordinance. Furthermore, once the landlord’s certificate is taken away based on conditions and/or conduct occurring at one of his rental units, he is apparently prohibited from leasing any of his units to new tenants, even if these other apartments are in a completely habitable condition and the tenants within are blameless. The ordinance therefore has the potential to needlessly restrict the availability of affordable rental housing opportunities within the community.

### **2. Disproportionate Adverse Effect on Minority Families**

If a landlord’s rental license is revoked or suspended according to the process detailed in the ordinance, the landlord is apparently required to suspend leasing to any new tenants at all of his rental properties. Such an outcome would have a disproportionate adverse effect on minority families in St. Louis County because a disproportionate percentage of minority households are renters. According to 2010 Census data, African-American households represent 21.58 percent of the population yet African-American households that are renting represent 37.08 percent of households in St. Louis County.<sup>1</sup>

Researchers in Milwaukee have found that municipal programs targeting “nuisance” rental property often create a disparate impact on members of protected classes under the Fair Housing Act. A study of nuisance citations in Milwaukee found that “properties in black neighborhoods disproportionately received citations, and those located in more integrated neighborhoods had the highest likelihood of being deemed nuisances.”<sup>2</sup>

### **3. Endangers Victims of Domestic Violence**

This ordinance is also problematic for victims of domestic violence. According to the ordinance, a landlord’s license will be suspended or revoked if there are three or more “public nuisance” acts at any property or if an occupant or the owner has a conviction of misdemeanor, felony or

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<sup>1</sup> American FactFinder, Census 2010

<sup>2</sup> Matthew Desmond and Nicol Valdez, “Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women,” 78(1) *American Sociological Review* 117-141 (February 2013) (available at: <http://asr.sagepub.com/content/78/1/117>).

ordinance violation. This could routinely include displacement of tenants who actually were victimized by crime in their homes, and particularly victims of domestic abuse.

It is common that when a victim calls the police for assistance her abuser will be arrested and may be convicted, which would trigger the suspension or revocation of a landlord's license and threatening the disruption of tenant leases. As tenants learn of the risk that seeking police help could lead to displacement they may be less willing to reach out for assistance, which could have tragic consequences.

The previously cited study in Milwaukee found that nearly a third of all nuisance citations were generated by domestic violence; most property owners abated this 'nuisance' by evicting battered women.<sup>3</sup>

#### **4. Failure to Allow Reasonable Accommodations for Persons with Disabilities**

These requirements are also problematic because they create significant problems for persons with disabilities who request reasonable accommodations. By creating one-size-fits-all rules regarding public nuisance designations and ordinance violations, the ordinance limits a landlord's ability to make reasonable accommodations to its rules, policies, and procedures in order to allow persons with disabilities the equal opportunity to use and enjoy their dwellings.<sup>4</sup> The license rules in the ordinance potentially expose both the landlord and the County to liability under the Fair Housing Act.

EHOC has encountered this problem, while assisting Land of Lincoln Legal Services in representing a client in Granite City, Illinois. In that case, a tenant with a mental disability was charged with a misdemeanor that was directly related to his or her mental disability. Under the Fair Housing Act and the Illinois Human Rights Act, that tenant was entitled to request that his eviction to be stayed as a reasonable accommodation.<sup>5</sup> While his landlord was willing to grant the accommodation, the city threatened to take action against him because of his refusal to initiate eviction proceedings.

#### **5. Lack of Due Process for Landlords and Tenants**

We are concerned that the ordinance as does not sufficiently safeguard the constitutionally protected due process rights of both landlords and tenants. The ordinance is impermissibly vague as to the meaning of the word "dwelling" and its application to multi-family units if there are multiple violations occurring in different households. While the ordinance specifies that an owner may appeal a license suspension or revocation in writing to the Director and there will be a contested hearing, it only provides a five (5) day window for such appeals, which is insufficient

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<sup>3</sup> See footnote 2, above.

<sup>4</sup> As required by the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(B)

<sup>5</sup> See, e.g., *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109, 1127 (D.C. 2005) (concluding tenant sufficiently pled that landlord should have postponed eviction hearing); *City Wide Assoc. v. Penfield*, 40 Mass. 140, 564 N.E.2d 1003 (Mass. 1991) (ordering landlord to accommodate tenant's disability by discontinuing eviction action).

time for a landlord to properly investigate the Director's claims and prepare an adequate response.

The ordinance provides absolutely no opportunity for tenants to challenge the enforcement of this ordinance that could potentially lead to their eviction or displacement. The ordinance creates what is in effect a one-strike policy for certain categories of offenses that may lead to unintended, even absurd, evictions of innocent families for relatively insignificant criminal offenses committed by any occupant of the household. For example, under this ordinance, a family could face eviction if their minor child is issued an MIP at a friend's house two counties away, regardless of whether the child has any criminal history or background whatsoever. Under this bill, this family could be subjected to an eviction – mandated by the County - without ever being given the opportunity to defend themselves from the adverse governmental decision, which will stay on their record regardless of whether they are ultimately successful in the eviction action. The ordinance needs to include procedures to ensure that tenants have due process early in the enforcement process and as soon as a landlord is informed of a public nuisance or alleged convictions at their properties.

## **6. Inconsistent with St. Louis County's Duty to Affirmatively Further Fair Housing**

St. Louis County is an entitlement jurisdiction that receives housing and community development funds from the federal government, and as such the County is obligated to affirmatively further fair housing (AFFH) by assessing and mitigating the adverse impact of its housing policies on groups that are protected by fair housing law.<sup>6</sup> Otherwise, the County is at risk of losing access to these critical federal funds. The County must therefore consider whether it can achieve its public safety objectives through means that would have less of a discriminatory effect on minority households, victims of domestic violence, and persons with disabilities.

Landlord registration and training are good tools that the County can use to promote the quality of its rental housing stock without generating the loss of housing opportunities for minority families (and other serious problems) likely to result from the portions of the proposed ordinance dealing with suspension or revocation of the license. We strongly urge the City to focus on improving implementation of this existing authority rather than to adopt the current proposed Code which will open the County up to charges that it has failed in its duty to AFFH.

## **Conclusion**

If the County continues to pursue a residential real estate licensing requirement, then it should at least significantly narrow the scope and the permissible grounds for taking away a landlord's license. The County should also not prevent a landlord who does lose his certificate because of problems at a particular property from continuing to rent out other units that are safe and habitable. The County should be concentrating its limited public safety resources on addressing rental properties where conduct and/or conditions pose a serious and chronic threat to the health and safety of residents and others in the immediate vicinity. This will help to preserve the supply

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<sup>6</sup> As required by the Fair Housing Act, 42 U.S.C. § 3608 (e)(5), the Housing and Community Development Act of 1974, Section 104(b)(2), and Executive Order 12892.

of much needed rental housing. It will also help to avoid an increase in the number of vacant residential buildings in the County, which would be a highly undesirable outcome in this time of ongoing crisis in the housing market. Finally, focusing the County's enforcement authority on the most serious problems will cut down on the risk of inconsistency in administration that can actually expose the County to liability.

Sincerely,

A handwritten signature in black ink, appearing to read "Willie Jordan".

Willie Jordan  
Executive Director

A handwritten signature in black ink, appearing to read "Zachary M. Schmook".

Zachary M. Schmook  
Managing Attorney  
Deputy Director