

June 13, 2025

Via Email

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**Re: Enforcement of Fayetteville Noise Ordinance
Against Protests and Demonstrations**

Dear Interim Chief Joyce,

We write to acknowledge community concern regarding the enforcement of the Fayetteville City Code Noise Ordinance (§17-7–18). Specifically, we have heard reports that use of amplified sound has resulted in the shutdown of protests, and organizers of the No Kings Rally/Protest (to be held on June 14) have been warned that use of amplified sound during their event may result in arrests.

As explained below, the planned No Kings Rally/Protest does not violate the restrictions imposed by the Ordinance, nor should the Sound Equipment Ordinance be enforced against protesters in the Core Downtown Area. Further, enforcing either Ordinance or otherwise restricting the use of amplified sound during a daytime protest would likely violate the First Amendment of the Constitution.

I. The use of Amplified Sound at the Planned No Kings Rally/Protest follows the City Code's Noise Ordinance.



The planned No Kings Rally/Protest complies with the Fayetteville City Code's Noise Ordinance. The City Code prohibits the use of loudspeakers "between the hours of... 10:00 p.m. and 10:00 a.m. on weekends and holidays in areas within or adjacent to residential, commercial, or noise sensitive areas." (§ 17-11.2). The planned Rally/Protest will begin at 10:00 a.m., and therefore the use of loudspeakers is not prohibited under the Ordinance.¹

It is worth noting that the Ordinance's scheme explicitly allows exceptions to the Noise Ordinance by permit, § 17-12.6, which we understand was sought and denied without justification here. As discussed below, the First Amendment required issuance of this permit, and nonetheless allows sound amplification in this circumstance even without a permit. However, should the City attempt to enforce the Noise Ordinance at the planned No Kings Rally/Protest, arresting individuals for using amplified sound during a political protest would be a misapplication of the Ordinance.² While City Code

¹ While § 17-11.2 provides that the time restriction can be waived by the chief of police, this does not apply to daytime protests that fall outside of the time restrictions of § 17-11.2.

² Further, to the extent the City seeks to enforce the Ordinance the sound level must be measured from the audibility distance provided by Table 1 in § 17-10. Sound level measurements should be taken *at least* 75 feet away from the machine amplifying the sound, as the rally/protest will occur in a public space "user occupancy" area. Recent review of the area surrounding the planned rally/protest route does not reveal any "conspicuous signs" demonstrating that the areas are a "noise sensitive zone." (§17-11.10) Therefore, any measurement of sound levels must be taken from *at least* 75 feet away from the sound amplifier.

§ 17-17.a.3.a provides that officers may arrest individuals for violations of §17-16, which prohibits the use of any “radio, tape recorder, cassette player, or other machine or device for reproducing sound,” amplified sound at a protest falls outside of this provision. As instructed by § 17-11, the use of a loudspeaker in the protest context is distinct from the use of a “radio, tape recorder, cassette player, or other machine or device for reproducing sound,” as articulated in § 17-16. Therefore, should the City of Fayetteville arrest any individual for the use of amplified sound during a protest, its agents would be acting outside of the Noise Ordinance to do so.³



II. The Sound Equipment Ordinance Cannot Be Applied to Protests in the Core Downtown Area.

§ 24-140, the Ordinance governing the use of sound equipment in the Core Downtown Area in general does not encompass protests or demonstrations and cannot be applied to the No Kings Rally/Protest. § 24-133 guides the Scope of the provision, and as such, the Sound Equipment Ordinance ought to only apply to “any person” trying to “sell, offer for sale, exhibit or demonstrate any goods, wares, merchandise, mechanical devices, animals or articles or any kind whatsoever” within the Core Downtown Area. In short, the No Kings Rally/Protest and other protests are not the types of “business[es] or organization[s]” whose conduct is governed by § 24 of the City Code.

III. Prohibiting Noise Amplification at a public, daytime protest is likely unconstitutional.

If the City attempts to prohibit amplified sound at this weekend’s protest, the City would be infringing upon the First Amendment rights of the participants. The Fourth Circuit Court of Appeals has held that “‘the right to amplify speech’ is within the protections of the First Amendment.” *Jim Crockett Promotion, Inc. v. City of Charlotte*, 706 F.2d 486, 491 (4th Cir. 1983). Further, the same court ruled that an ordinance that “curtails the amplification of political expression solely because

³ In fact, § 17-17.a.3 specifies “[a]ny police office may **only** issue citations and not physically arrest violators” who fall outside the ambit of §§ 17-13.c and 17-16. (emphasis added).

[it]... exceeds the permissible sound level,” is unconstitutional without adequate justification. *U.S. Labor Party v. Pomerleau*, 557 F.2d 410, 412 (4th Cir. 1977). The right to conduct a weekend protest, and one that is inherently political, cannot be infringed simply because a municipality wants to combat “excessive and unnecessary noise.” *State v. Garren*, 117 N.C.App. 393, 397 (1994) (citing to cases from across the United States demonstrating the inadequacy of “unnecessary noise” as a state interest). Therefore, the enforcement of the Noise Ordinance against individuals exercising their First Amendment rights may be unconstitutional.



IV. The City’s Sound Equipment Ordinance is likely unconstitutional when enforced against protesters.

The City’s Sound Equipment Ordinance is likely unconstitutional if enforced against protesters. § 24-140 prohibits the use of “any electronic sound amplification equipment” within the “Core Downtown Area.” As currently constructed, the ordinance “sanctions a device for suppression of free communication of ideas” and therefore is unconstitutional. *Saia v. People of State of New York*, 334 U.S. 558 (1948). § 24-140 gives no guidance on the permitting process, nor factors that play into deciding if a permit is granted. Allowing a city to “allow an official to ban [loudspeakers] in his uncontrolled discretion” is unconstitutional, as it can lead to inconsistent and sporadic enforcement, curtailing certain types of speech. *Saia*, 334 U.S. at 562. Further, community partners have indicated that the enforcement of the Sound Equipment Ordinance has been just that – sporadic and inconsistent. To continue to enforce this Ordinance against protesters is likely unconstitutional.

We ask that the City of Fayetteville abide by its own Noise Ordinance policy and allow for the use of amplified sound at weekend protests taking place between the hours of 10 AM and 10 PM, including the June 14th No Kings Rally/Protest. We generally ask that the City of Fayetteville respect the First Amendment rights of individuals planning to participate in the No Kings Rally/Protest, and protests in the future and caution

that the city and its officials may incur liability for their failure to do so.

Please let us know if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'JM', with a long horizontal line extending to the right.

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