



January 2, 2008

**BY EMAIL AND U.S. MAIL**

Council Member Steve Bertagna  
Council Member Mary Flynn  
Council Member Scott Gruendl  
Council Member Andy Holcombe  
Council Member Tom Nickell  
Council Member Ann Schwab  
Council Member Larry Wahl

Chico City Council  
PO Box 3420,  
Chico, CA 95927

Re: Ordinance No. 2365, "Disorderly Events"

Dear Council Member Holcombe:

I am writing on behalf of the American Civil Liberties Union of Northern California. It has come to our attention that the Chico City Council may be reconsidering the City's new "Disorderly Events" law, Ordinance No. 2365. As discussed below, we believe that the law violates the First Amendment of the United States Constitution and Article I, Sections Two and Three of the California Constitution. We therefore urge the City Council to repeal or amend the law to fix these infirmities.

Ordinance 2365 amended the Chico Municipal Code to require that "all persons attending a disorderly event shall immediately disperse upon the order of a police officer." Chico Municipal Code § 9.40.040(D). It broadly defines a "disorderly event" to include any gathering – specifically including demonstrations and marches -- where a single felony, or three specified misdemeanors and infractions, occurs at the event or "on adjacent property." *Id.* § 9.40.030(A)-(C). Any person who fails to obey a dispersal order is guilty of a criminal infraction. *Id.* § 9.40.060.

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These provisions violate the constitutional protections of free speech and assembly. "The right to assemble peaceably, like freedom of speech, is guaranteed by the First Amendment."<sup>1</sup> Laws like Ordinance 2365 that restrict the ability of people to gather, march, or parade limit both of these rights.<sup>2</sup> Thus, "although the public may fear a large, noisy assembly, . . . such an apprehension does not warrant restraints on the right to assemble unless the apprehension is justifiable and reasonable and the assembly poses a threat of violence."<sup>3</sup> The police may therefore disperse a demonstration only if the crowd as a whole presents such a threat of imminent violence or serious unlawful behavior that taking action against individual wrongdoers cannot adequately preserve public safety.<sup>4</sup>

Ordinance 2365 violates these constitutional principles because it allows the police to disperse any number of persons who are peacefully and lawfully expressing themselves based on the acts of a few and in situations that do not pose a clear and present danger of violence or some other true threat to public safety. For example, the law would allow the police to disperse a large crowd of peaceful demonstrators because three minors were present in violation of Chico's curfew ordinance,<sup>5</sup> or because a single person in the crowd had contraband in his pocket.<sup>6</sup> It would even allow a dispersal order when individuals who are not part of the demonstration, but who are on "adjacent property," commit violations. In short, the ordinance improperly allows the police to suppress much more speech than is necessary to further the City's legitimate interests in preserving public peace and safety.<sup>7</sup>

For these reasons, we urge the City Council to repeal Ordinance 2365. If the Council believes that existing laws<sup>8</sup> are inadequate to address specific problems that Chico faces, it should consider legislation that specifically addresses these issues without unnecessarily intruding into constitutionally protected activity.

<sup>1</sup> *In re Brown*, 9 Cal.3d 612, 623 (1973); see *Collins v. Jordan*, 110 F.3d 1363, 1371 (9<sup>th</sup> Cir. 1996).

<sup>2</sup> See *Brown*, 9 Cal.3d at 623.

<sup>3</sup> *Brown*, 9 Cal.3d at 623.

<sup>4</sup> See *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 120 (D.C.Cir.1977) ("It is the tenor of the demonstration as a whole that determines whether the police may intervene; and if it is substantially infected with violence or obstruction the police may act to control it as a unit."); see also *Barham v. Ramsey*, 434 F.3d 565, 575-76 (D.C. Cir. 2006); *Jones v. Parmley*, 465 F.3d 46, 57 (2d Cir. 2006) ("police may not interfere with demonstrations unless there is a 'clear and present danger' of riot, imminent violence, interference with traffic or other immediate threat to public safety.").

<sup>5</sup> See Chico Municipal Code § 9.56.010. The inclusion of this provision in the list of sections that allow an order to disperse is particularly troubling, for the reasons discussed in *Nunez by Nunez v. City of San Diego*, 114 F.3d 935 (9<sup>th</sup> Cir. 1997).

<sup>6</sup> See, e.g., Health & Safety Code § 11350, 11377 (felony drug possession).

<sup>7</sup> See *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989); see also *N. A. A. C. P. v. Claiborne Hardware Co.*, 458 U.S. 886, 918-20 (1982).

<sup>8</sup> That state law defines the circumstances under which the police may order the dispersal of a public gathering limits the City's authority to legislate further in this area. See *Rees v. City of Palm Springs*, 188 Cal.App.2d 339, 344-45 (1961); see generally *O'Connell v. City of Stockton*, 41 Cal.4th 1061, 1067-69 (2007).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Risher". The signature is written in a cursive style with a large, prominent "M" and "R".

Michael Risher  
Staff Attorney