



P.O. Box 28004 • Raleigh, North Carolina 27611-8004

Phone (919) 834-3466 • Fax (866) 511-1344

www.acluofnc.org

November 17, 2015

Community Safety Committee
Charlotte City Council
600 East 4th St.
Charlotte, NC 28202

RE: Committee Consideration of Public Safety Zones

Dear Committee Members:

As the Community Safety Committee considers moving forward with the establishment of “Public Safety Zones” to combat crime, I write to express the many concerns that the ACLU-NC has with such a proposal. People living in neighborhoods that are experiencing high rates of crime are dealing with a serious problem, and understandably want City Council’s assistance in developing a solution. For the reasons described in detail below, establishing such exclusion zones is not the appropriate answer to the question of what can be done.

At the outset, the ACLU-NC has serious constitutional concerns with exclusion zones. Exclusion zones would ostensibly ban someone who has been arrested inside the zone from returning, for up to a period of ninety days. Upon conviction, that period of time would be extended for up to one year. There are myriad, core constitutional rights that are implicated by such a ban—the two most glaring of which are the right to travel and the freedom of association.¹

Public Safety Zones most immediately impact one’s right to travel and move about freely in public spaces. The North Carolina Supreme Court has explicitly recognized that the right to intrastate travel is a fundamental right that is “. . . part of every individual’s liberty, protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and by the Law of the Land Clause, Article I, § 17, of the Constitution of North Carolina.”² Because the exclusion zones would deny people access to certain parts of Charlotte, the City would be infringing on this constitutionally protected right.

Also impacted by such a ban are the constitutional rights to both intimate and expressive association. The freedom of intimate association refers to the right to form “certain kinds of

¹ Other potential constitutional concerns include violations of the Fourth Amendment’s protection against unreasonable searches and seizures, Fifth Amendment protections against self-incrimination and double jeopardy, Sixth Amendment right to counsel, and Fourteenth Amendment guarantees of Due Process and Equal Protection.

² State v. Dobbins, 277 N.C. 484, 497, 178 S.E.2d 449, 456 (1971).

highly personal relationships,” and encompasses marriage, having and raising children, and living with one’s relatives.³ Freedom of expressive association, on the other hand, is defined as “a right to associate for the purpose of engaging in activities protected by the First Amendment—speech, assembly, petition for redress of grievances, and the exercise of religion.”⁴ Both the freedom of intimate association and the freedom of expressive association are implicated by a proposal that would bar a person from entering certain parts of the city in order to access, for example, family, friends, religious communities, or political rallies.

Any ordinance that implicates fundamental rights like the right to travel or the right to associate can survive only if it is narrowly tailored to serve a compelling government interest. Although we agree that curbing crime is indeed a compelling government interest, a blanket exclusion zone that bans one’s access to parts of Charlotte is not the sort of narrowly tailored response that a court would be likely to uphold.⁵

It is our understanding that in order to address the constitutional concerns that a proposal of this nature undoubtedly raises, the zones would contain potential variances, including a residential variance, an essential needs variance, an employment variance, a social services variance, an educational variance, and a general variance that can be granted by the police for any reason. Variances allow only travel to and from locations within the exclusion zone for the express purpose described in the variance. This means, presumably, that the excluded person is still subject to arrest and prosecution for a misdemeanor if she stops along her way to talk with a neighbor, or sits for a few minutes on a park bench. Even with variances in place, the zones would significantly restrict activities that are “historically part of the amenities of life as we have known them.”⁶ That restriction of liberty is at worst a constitutional violation and at best a practice that will harm individuals and fray the community fabric.

We are also deeply troubled by the disproportionate impact exclusion zones are likely to have on communities of color. That has indeed been the case in Portland, Oregon—home of similar Drug Free Zones. Data released by the City of Portland shows that over a five month period in 2006, 800 people were arrested inside the zones, and roughly half of those arrested were black. This is despite the fact that black residents only account for nine percent of the overall population of the city. In addition, while sixty percent of white arrestees were issued exclusion citations, *one hundred percent* of black arrestees received citations.⁷ Not only were black residents disproportionately targeted for arrest inside the zones, they were excluded from the zones at a significantly higher rate as well. A recent UNC report suggests that outcomes of an exclusion zone policy in Charlotte would not be much different. The report, analyzing search incident to traffic stop data in Charlotte, shows that black drivers are fully twice as likely as

³ *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18 (1984).

⁴ *Willis v. Town of Marshall*, 426 F.3d 251, 258-59 (4th Cir. NC 2005) *citing* *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18 (1984).

⁵ *See, e.g., Johnson v. Cincinnati*, 310 F.3d 484 (6th Cir. 2002).

⁶ *City of Portland v. Burrage*, 2005 WL 5490460 (Or. Cir. 2005).

⁷ *See* Partnership for Safety and Justice, *Yes Racial Disparity Exists in Oregon* (Aug. 2007), *available at* <http://www.safetyandjustice.org/node/1116>.

white drivers to be searched during a traffic stop.⁸ Policing practices in Charlotte already disproportionately impact black Charlotteans, and that problem will likely only be exacerbated by the creation of Public Safety Zones.

Rather than implement constitutionally suspect, racially biased exclusion zones that are also likely to simply displace crime rather than dispel it, Charlotte should consider other options to address a rising crime rate. Cities such as Cincinnati, once home to exclusion zones, have abandoned the zones in favor of a successful community policing model that is realizing a significant reduction in crime as well as in the number of misdemeanor arrests. It is our hope that Charlotte will consider the exclusion zone experiences and current, evidence-based best practices of such cities as it works to ameliorate crime throughout the Queen City. We all want something that works. Exclusion zones do not.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Birdsong', with a long, sweeping flourish extending to the right.

Susanna Birdsong
Policy Counsel

⁸ See Frank R. Baumgartner, et al., UNC-Chapel Hill, Summary of Black-White Differences in Traffic Stops and Searches in Charlotte, NC, 2002-2013 (Apr. 2015), available at <https://www.unc.edu/~fbaum/TrafficStops/Reports2014/Charlotte-Summary.pdf>.