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August 8, 2016

Marie Jones
Community Development Director
416 N Franklin Street
Fort Bragg, CA 95437

Re: Fort Bragg Measure U

Dear Ms. Jones:

I am an attorney at Disability Rights California, a non-profit agency serving Californians with disabilities each year through advocacy, legal representation, abuse investigations, and public education initiatives. Disability Rights California is the nation's largest disability rights organization, and is the agency mandated to provide protection and advocacy services for those individuals in California who have developmental, physical, sensory, and/or mental disabilities, pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §§ 15001, 15041, et seq., as amended, 45 C.F.R. § 1386; Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801, et seq.; the Protection and Advocacy for Individual Rights Act, 29 U.S.C. § 794e; the Assistive Technology Act, 29 U.S.C. §§ 3011, 3012; the Ticket to Work and Work Incentives Improvement Act, 42 U.S.C. § 1320b-20; the Children's Health Act of 2000, 42 U.S.C. § 300d-53; and the Help America Vote Act of 2002, 42 U.S.C. § 15461-62; and California Welfare & Institutions Code §§ 4900 et seq.

I am writing to express Disability Rights California's concerns about Measure U, which would have amended the Fort Bragg zoning code to prohibit social service organizations from operating in the Central Business

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District without a special use permit if they were not in operation prior to January 1, 2015, and restricted the growth of pre-existing social service organizations. We understand that the Fort Bragg City Council unanimously opposed Measure U, and that it was narrowly defeated in the June, 2016 election. That ordinance, or any similar measure, would have had significant negative effects on people with disabilities in the Fort Bragg area. It also would have violated state and federal anti-discrimination and land-use laws. For the reasons discussed below, we urge the City Council to reject these types of ordinances in the future.

Many people with disabilities in the Fort Bragg area rely on social services in the Central Business District. For example, one of our clients is an older adult with a developmental disability who works with the Art Explorers creative arts program and the Parents & Friends support agency, both of which are located in the Central Business District. Art Explorers has given this individual opportunities to express himself through art and to exhibit and sell his work, and has connected him with the Mendocino Coast art community. Parents & Friends has provided him with someone to assist with activities of daily living such as transportation, budgeting, and medical services. Having worked with him for over twenty-five years, each of these agencies has helped him achieve a sense of purpose and a sense of belonging. They have also increased his self-confidence and self-sufficiency, allowing him to become an active participant in the larger Fort Bragg community.

If Measure U were enforced against Art Explorers, Parents & Friends, and other social service agencies that have been in the Central Business District since before January 1, 2015, they would not be allowed to enlarge or increase the use of their space in the Central Business District, and could be forced out of the Central Business District if their rent increased or other conditions changed.

Social service organizations that have located, or try to locate, in the Central Business District since 2015 would require a special use permit to operate or continue operation. Given the "Not In My Backyard" (NIMBY) climate surrounding such an ordinance, a special use permit requirement would likely prevent social service organizations from locating in the

downtown area, where their clients need them most, and could prevent them from operating at all.

If enacted, Measure U would have constituted a discriminatory and unlawful ordinance.

We agree with the City Attorney's September 4, 2015 legal analysis that it would be illegal to enforce Measure U against pre-existing social service organizations, and would violate state and federal antidiscrimination and land use laws as applied to social service organizations which located in the Central Business District after 2015.

Measure U would have been subject to challenge as discriminatory and unlawful under state and federal disability rights laws. These laws were intended to protect people with disabilities "from deprivations based on prejudice, stereotypes, or unfounded fear." *Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 737 (9th Cir. Cal. 1999) (citing *School Board of Nassau County v. Arline*, 480 U.S. 273, 287 (1987)); *Chalk v. United States Dist. Court*, 840 F.2d 701, 707-08 (9th Cir. 1988) ("To allow the court to base its decision on the fear and apprehension of others would frustrate the goals of Section 504."); *Innovative Health Systems, Inc. v. City of White Plains*, 117 F.3d 37, 49 (2d Cir. 1997) ("Although [a city] may consider legitimate safety concerns in its zoning decisions, it may not base its decisions on the perceived harm from . . . stereotypes and generalized fears.").

An ordinance based on Measure U would violate the federal Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. Within the text of the ADA, Congress set forth its broad goal of "providing a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Title II of the ADA protects people with disabilities from discrimination by public entities, and from being excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity because of a disability. 42 U.S.C § 12101 et seq. Similarly, under Section 504 of the Rehabilitation Act, as a recipient of federal financial assistance, the City

may not discriminate against people with disabilities or which utilize criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination. 29 U.S.C. § 794 et seq.; 24 C.F.R. § 8.4(b)(4).

The ADA and Section 504's prohibition on discrimination on the basis of disability includes discrimination in land-use and zoning ordinances. Public entities are prohibited from making zoning decisions which have the effect of excluding individuals with disabilities from, denying the benefits of, or otherwise subjecting them to discrimination, or which tend to screen out individuals with disabilities from fully and equally enjoying any public program or service. 28 C.F.R. §§ 35.130(b)(4)(i), 35.130 (b)(8). See *Bay Area Addiction Research Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 730 (9th Cir. 1999) (holding that Title II of the ADA and Section 504 apply to discriminatory zoning practices because zoning is a normal function of a government entity); *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 44-49 (2d Cir. 1997) (holding that the ADA applies to zoning decisions involving drug and alcohol rehabilitation center); and the Americans with Disabilities Act: Title II Technical Assistance Manual ("TA Manual") § II-3.6100, illus. 1 (1993) (identifying zoning as covered by the statute).

If passed, Measure U would have violated the legal provisions discussed above. These provisions prohibit the City from enacting and enforcing land use provisions that have the intent or effect of discriminating against people with disabilities in their access to social services and transitional or supportive housing. Measure U on its face targets people with disabilities, and is clearly designed to restrict a particular facility that serves people with disabilities. It also has a disparate impact on people with disabilities, who use these services much more than general population.

An ordinance based on Measure U would also violate California State law. The California Disabled Persons Act (CDPA) gives people with disabilities or medical conditions the same right as the general public to the full and free use of public places as people without disabilities. Cal. Civ. Code

§54(a). Any violation of the ADA is also a violation of the CDPA. Cal. Civ. Code, § 54(c).

California Government Code § 65008 makes “null and void” any zoning action that “denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use” on the basis of certain factors, including low income and disability. Discriminatory intent is not necessary, as long as the effect of the land use decision is to discriminate against a protected class. *See, e.g., Keith v. Volpe* C.D. Cal. (1985) 618 F. Supp. 1132, 1158 (city’s restrictions on development to replenish housing lost to freeway construction discriminated against people with low incomes in violation of § 65008); *Bruce v. City of Alameda* (1985) 166 Cal. App. 3d 18, 22 (ordinance prohibiting the development of government subsidized rental housing without voter approval violated § 65008). In addition, as a recipient of state funds, the City may not make land use decisions that discriminate against people with disabilities in access to social services. Government Code § 11135.

An ordinance based on Measure U may also violate state and federal housing discrimination and planning laws as applied to social service organizations that provide housing. California’s Fair Employment and Housing Act (Government Code § 12900 et seq.) and the federal Fair Housing Act (42 U.S.C § 3601 et seq.) prohibit zoning ordinances that have a discriminatory effect on housing for people with low incomes or people with disabilities. If the ordinance were applied to social service organizations that provide transitional or supportive housing for people with disabilities, it may be discriminatory because it disproportionately affects people with low incomes and people with disabilities, and would therefore violate these antidiscrimination laws.

Pursuant to federal law, the City has an affirmative duty to further fair housing choice. Last year, HUD issued a final rule on Affirmatively Furthering Fair Housing (AFFH), clarifying communities’ obligations to report to HUD on their efforts to reduce barriers to fair housing for people with disabilities and other populations. State and local governments must

certify that they are complying with AFFH obligations as part of the Consolidated Plan process, which prioritizes and plans how they will allocate community development funds received from the federal government. 42 USC §12701 et seq.; 24 CFR Parts 91 & 570. If the proposed ordinance had been adopted, the City would have been in violation of this duty. A violation of this duty jeopardizes federal funding in that HUD may withdraw its funds, or seek reimbursement of its funds, as it has done in other jurisdictions across the country. In addition, California Housing Elements obligations requires local governments to plan for housing to meet the needs of certain populations, including people with disabilities and people with low incomes. Govt Code §65580 et seq. California's Housing Accountability ("Anti-NIMBY") Act prohibits local governments from making land use decision that disapprove, or make infeasible, housing developments without specified written findings. Govt Code §65589.5. Measure U would have violated any or all of these obligations.

Please note that this is not a comprehensive discussion of the unlawful components of Measure U, but simply highlights some of our major concerns. There are additional unlawful aspects to Measure U. For example, we agree with the City Attorney that if enacted, Measure U could not have been legally enforced against social service organizations located in the Central Business District before the ordinance was passed. Where "a retroactive ordinance causes substantial injury and the prohibited business is not a nuisance, the ordinance is to that extent an unreasonable and unjustifiable exercise of police power." *Jones v. City of Los Angeles* (1930) 211 Cal. 304, 321. Specifically, zoning ordinances may not retroactively interfere with a property owner's vested rights in the property. *Avco Cmty. Developers, Inc. v. S. Coast Reg'l Com.* (1976) 17 Cal. 3d 785, 791. Measure U would have caused substantial injury to social service organizations located in the Central Business District. Therefore, it would have been an illegal retroactive ordinance.

Social services and transitional and supportive housing are critical to providing people with disabilities in Fort Bragg the opportunities to live

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independently and to fully participate as active members of their community. Measure U would have significantly curtailed those opportunities by making those services less available in the Central Business District, where people with disabilities need them most, and would likely have had an impact felt throughout the area.

Finally, we are aware that Fort Bragg Zoning Code 18.100.010 defines "social service organization" as a separate land use category. This enables the City to make land use decisions that target organizations that provide social services to people with disabilities. For the reasons discussed above, land-use decisions that disproportionately affect people with disabilities violate state and federal law. Therefore, we urge the City to remove this provision.

We hope that the Fort Bragg community and its leaders will take steps to address the fear and stereotypes that led to Measure U, and to prevent similar initiatives from appearing on future ballots. Please feel free to contact us if we can answer any questions, provide more information, or otherwise be of assistance in working to ensure that Fort Bragg fulfills its promise and obligation to integrate people with disabilities as full and active members of its community.

Sincerely,



Pamela Cohen
Staff Attorney

cc: Fort Bragg City Council
Linda Ruffing, City Manager
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