

ACLU NEBRASKA WARNS OMAHA: NIGHT OWL LAWS ARE UNENFORCEABLE

For immediate release 3-26-09

ACLU Nebraska issued a formal warning to the City of Omaha today: their “anti night owl” ordinances passed last November are illegal and unenforceable.

Section 20-43 and 18-3 of the Omaha Municipal Code are the two provisions at issue. Section 20-43 would make it a crime for a citizen to refuse to disperse if police have arrested someone else for disturbing the peace and Section 18-3 would label businesses as a “nuisance” if people hang out on the business property after hours and make noise.

“Both of these laws were reportedly to address after hours noise problems caused by night owls who stay up after 1 a.m.,” said ACLU Nebraska Executive Director Laurel Marsh. “But the City of Omaha has sacrificed the legal rights of law abiding citizens to try and address a routine law enforcement problem.”

“The cases from the US Supreme Court are clear,” said ACLU Nebraska Legal Director Amy Miller. “Cities can’t make it illegal for people to hang out, even in the middle of the night. You can’t arrest me because someone nearby me was making noise. Only the person causing the disturbance can be ticketed--everyone else has a right to congregate in public, even in the wee hours of the morning.” Miller continued “We have a strong suspicion these ordinances were passed to target night owls in North Omaha only. The city is trying to make it illegal for the mostly-minority neighborhoods to have after-hours activity, and that’s just flat out unconstitutional.”

ACLU Nebraska’s warning came via a letter available on their website, www.aclunebraska.org that has been sent to the Omaha Mayor and City Attorney. ACLU warns the city that enforcement of the laws are impossible and that the city must voluntarily repeal the sections or at least not issue any tickets. “If the city does begin to enforce these laws,” said Miller, “ACLU will consider filing a lawsuit. The 1999 Supreme Court case cited in our letter, *Chicago v. Morales*, is an ACLU case. We’re willing to make that law a reality here in Nebraska.”
