



VIA ELECTRONIC MAIL

June 2, 2020

Eric Garcetti
Mayor, City of Los Angeles
200 N. Spring Street
Los Angeles, CA 90012
mayor.helpdesk@lacity.org

Re: City of Los Angeles Curfew Order

Dear Mayor Garcetti:

We respectfully request that you rescind or substantially restrict the Curfew Order last revised on May 30, 2020. The Order in its present form is not authorized by statutory and municipal law. Furthermore, it violates the United States Constitution, including the Constitution's prohibition on restrictions of speech and assembly, its protection for the freedom of movement, and its most basic notice requirements.

We recognize that in the last few days some individuals have damaged and stolen property in areas where many others have engaged in peaceful protests, but that unlawful conduct cannot justify a state of emergency in the entire city that effectively places 4 million people under house arrest every night. The Constitution does not permit the City to order such a sweeping restriction on free speech and travel across this vast city to address a few localized attacks on property.

The Curfew Order Exceeds the City's Authority Under Govt. Code § 8634 and L.A. Administrative Code § 8.29

The Order exceeds the City's statutory and administrative authority because it extends far beyond any emergency it seeks to address. Local governing entities within California have authority to order a curfew to address a genuine "local emergency." Govt. Code §§ 8630, 8634. Similarly, the City has invoked authority under Administrative Code § 8.29, which in turn is limited to "local" emergencies. In its second clause, the Order states that it responds to a "significant amount" of criminal behavior. *See* Curfew Order cl. 2. However, that activity has occurred only in commercial districts in a few isolated parts of the City. Nonetheless, the Order applies throughout the entirety of City's 500 square miles, and to nearly all of its 4 million residents. *See* Curfew Order ¶ 2 (listing narrow exemptions). It therefore applies in numerous regions where no protests of any kind have occurred, let alone protests threatening life or property. While it is conceivable that a "local emergency" could encompass the whole City – such as perhaps after a severe earthquake – protests accompanied by damage to property in a few isolated locales do not give rise to an emergency in the entire City.

The Curfew Order Violates the First Amendment

The Order also violates the First Amendment. The “principal function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.” *Texas v. Johnson*, 491 U.S. 397, 408–09 (1989) (citation and quotation marks omitted). The Order dramatically restricts free speech by entirely suppressing all demonstrations occurring after 8pm.

A community’s right to protest day or night may not be infringed merely because some people have acted unlawfully in certain areas of the City. Moreover, even as to those areas, the First Amendment generally requires the state to punish those few who break the law rather than preventively suppressing everyone’s protected speech because of what a few people may do afterwards. “The generally accepted way of dealing with unlawful conduct that may be intertwined with First Amendment activity is to punish it after it occurs, rather than to prevent the First Amendment activity from occurring in order to obviate the possible unlawful conduct.... The law is clear that First Amendment activity may not be banned simply because prior similar activity led to or involved instances of violence.... Banning or postponing legitimate expressive activity because other First Amendment activity regarding the same subject has resulted in violence deprives citizens of their right to demonstrate in a timely and effective fashion.” *Collins v. Jordan*, 110 F.3d 1363, 1371–72 (9th Cir. 1996). Because an unlawful assembly can be declared only for “assemblies which are violent or which pose a clear and present danger of imminent violence,” *In re Brown*, 9 Cal. 3d 612, 623 (1973), so too curfews are authorized, if at all, only when the state has no other means to prevent actual or imminent mass violence.

Perhaps the City believes the Order lawful because it preserves alternative means of protest during daylight hours. However, particularly during weekdays, the ability to protest during daylight hours cannot constitute an adequate substitute for the right to protest after work. Moreover, to satisfy First Amendment requirements a curfew must *both* be narrowly tailored *and* allow for ample alternative channels of communication. A “restriction that meets the ample alternative requirement can fail the narrow tailoring requirement.” *iMatter Utah v. Njord*, 774 F.3d 1258, 1267–68 (10th Cir. 2014) (citing *United States v. Grace*, 461 U.S. 171 (1983)). The Order fails the narrow tailoring test not only because of its extraordinary geographic scope, but also because the lock-down it orders restricts more speech than necessary to achieve its aim. The City may enforce “other laws at its disposal that would allow it to achieve its stated interests” by enforcing the criminal laws prohibiting damage to property and, if necessary as a last resort in narrowly defined circumstances, unlawful assembly. *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 949 (9th Cir. 2011). Absent actual or imminent mass violence, “[o]bvious, less burdensome means for achieving the [City’s] aims are readily and currently available by employing traditional legal methods.” *Foti v. City of Menlo Park*, 146 F.3d 629, 642–43 (9th Cir. 1998). Because “there are a number of feasible, readily identifiable, and

less-restrictive means of addressing” the City’s interests, the Order “is not narrowly tailored” to serve those interests. *Comite de Jornaleros*, 657 F.3d at 950.¹

The Curfew Order Violates the Freedom of Movement

The Order also violates the Constitution’s protection for the freedom of movement. “Citizens have a fundamental right of free movement, ‘historically part of the amenities of life as we have known them.’” *Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 944 (9th Cir. 1997) (citations omitted). “In all the [s]tates from the beginning down to the adoption of the Articles of Confederation the citizens thereof possessed the fundamental right, inherent in citizens of all free governments, peacefully to dwell within the limits of their respective [s]tates, to move at will from place to place therein, and to have free ingress thereto and egress therefrom....” *United States v. Wheeler*, 254 U.S. 281, 293 (1920). While the state may impose restrictions on this right, any restrictions must both serve a compelling state interest and be narrowly tailored to accomplish that objective. *Nunez*, 114 F.3d at 946 (applying strict scrutiny to curfew order even though it only applied to minors).

The Order’s restrictions on movement are not narrowly tailored. Apart from the geographic breadth noted above, the Order applies to all kinds of movement, including many that obviously could not be mistaken for unlawful property damage. To give but a few examples, the Order bans people from walking with their children or dogs, jogging or riding bicycles for exercise, going to the grocery store, traveling for family caregiving obligations, and various other forms of entirely innocuous movement. Indeed, given that the Order’s only generally applicable travel exemptions permit travel to work and for “emergency medical care,” in practice the Order essentially places nearly everyone in the City under house arrest for nine and a half hours each night. The Constitution does not permit such a draconian deprivation of liberty under these circumstances. *Cf. Nunez*, 114 F.3d at 948 (striking down curfew order because “it does not provide exceptions for many legitimate activities.”).

The Curfew Order Contains Insufficient Notice

Finally, even if narrowed to deal with the various problems described above, the Order would remain unconstitutional because it provides for insufficient notice, as it contains no provision requiring authorities to notify individuals prior to enforcing the Order.

Both the Fifth and Fourteenth Amendments prohibit deprivations of liberty without “due process.” The most essential element of due process is, of course, notice. Due process requires that notice “be of such nature as reasonably to convey the required information.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Given the breadth of the Order’s prohibition, due process requires that officers seeking to enforce it provide notice to the general population of their intent to do so. The few cases

¹ *In re Juan C.*, 28 Cal. App. 4th 1093 (1994), does not support the Order. Among other differences, in that case the respondent did “not dispute that a state of emergency existed when the curfew went into effect.” *Id.* at 1098. The court’s holding was thus premised on the existence of a “bona fide emergency” presenting a serious threat of “imminent destruction of life and property.” *Id.* at 1100–01. As explained above, no such emergency exists here, and certainly not throughout the entirety of the City.

upholding curfews comparable (albeit lesser in scope) than this one have contained such a requirement. *E.g., In re Juan C.*, 28 Cal. App. 4th 1093, 1097 (1994) (order permitted arrest only of “such persons as do not obey this curfew *after due notice, oral or written, has been given to said persons*”) (emphasis added).

Thank you for considering this request.

Sincerely,

s/Ahilan Arulanantham

Ahilan Arulanantham

Senior Counsel