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January 22, 2019

Sacramento City Council
915 I St
Sacramento, CA 95814

**RE: PROPOSED EMERGENCY ORDINANCE ADDING SECTION 9.32.190 TO
SACRAMENTO CITY CODE**

To the Honorable City Council Members:

I am a member of the Board for the local chapter of the ACLU of Northern California. I hereby express my opposition to the above referenced proposed ordinance.

**Relevant Similar Situation Addressed to Los Angeles Council by
ACLU**

I take the liberty of attaching a letter from the ACLU addressed to the Los Angeles City Council when it was considering an ordinance similar to that proposed here. The points it makes are relevant here and now. In the briefest of summaries it makes the following points.

First, the ordinance is unnecessary. Its chief objective is to criminalize the possession of commonly possessed items. There are already laws and ordinances against injuring persons or vandalizing property.

Second, there are grave concerns about the legality and constitutionality of the proposed ordinance. For example, weapons such as firearms are prohibited as is pepper spray. Are arrests going to be made of persons allowed to carry concealed weapons? What about the rights protected by the Second Amendment to the United States Constitution? Are senior citizens like myself who carry pepper spray for personal defense going to be arrested?

Third, let there be no mistake but that this is an attempt to criminalize persons exercising their First Amendment rights to express their political opinions. If you did not participate in the recent Women's March, you must surely have seen some of the coverage of it. How many of the thousands of marchers then might

be subject to arrest under the proposed ordinance. Oh yes, there is a provision that "when feasible" a warning shall be issued before enforcement. How many languages are these warnings going to be made in? Sacramento is a very diverse community, as you know. Where and how are these warnings to be made? And perhaps most importantly of all who is going to be targeted for enforcement, whether such warnings are made or not?

There is No Emergency

There is no need for this ordinance to be treated as an emergency. The only purpose for portraying it as such is to shorten and indeed bypass the opportunity for citizen comments to address this proposal, bringing varied points of view for you to consider in your solemn task of considering criminalizing behavior in our beautiful city.

The Police Department appended Exhibit A to show the need for the proposed ordinance. Only 3 of the incidents listed took place in Sacramento. One in 2016, one in 2017, one in 2018. In each case arrests were made. So we have a total of 3 incidents in 3 years, in each of which arrests were made of those who injured people or destroyed property.

The Police Department did not and does not need to have a laundry list of items outlawed to maintain law and order.

I dare say that there is far more damage inflicted by the laundry list of items in non-protest or march situations, yet these items are not to be outlawed in those settings. Why is it that only those engaged in their First Amendment rights are to have the possession of any of these myriad of items criminalized?

The Laundry List of Items to Be Prohibited is Overbroad

The point has already been made that the proposed ordinance should be rejected in toto for the reasons stated above and in the attached letter.

In addition, have you read the laundry list of items? No balloons carrying sickening, etc. matter are allowed. What do these words mean? Do you know what the Dollar Tree puts in balloons? I don't. Such balloons might make children in a march criminals for carrying them. Glass bottles are disallowed. What about people who carry a beverage in a glass bottle so that they can keep from becoming dehydrated during a march? Are they now to become

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criminals? I have already mentioned pepper spray, which many carry for their personal protection. Will the police provide me with transportation home after a march if this ordinance is adopted, as I will not have my pepper spray with me to defend myself?

In conclusion, there is no emergency creating a need for this proposed ordinance to be treated as such. It should be rejected out of hand for being both overbroad and unconstitutional. If not rejected out of hand, it should be placed on the regular calendar with allowance for an adequate amount of time for the community to provide its input so that you are more fully informed about the potential consequences of this proposed ordinance.

As a registered voter who has never missed voting in my entire life once I reached my majority, as a retired attorney devoted to upholding and defending the rights provided under the U.S. (and California!) Constitutions, and as a person deeply committed to upholding the values of letting all the citizens of our community express their views in marches and in public comment before you, I respectfully request that you reject the proposed ordinance before you.

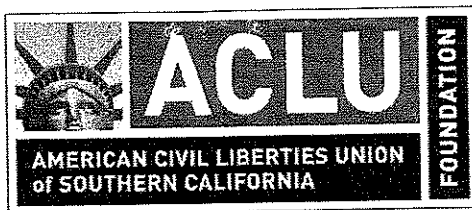
Thank you for your attention and for what I know to be your commitment to upholding your oaths of office.

Sincerely,

Cat Karell

Cat Karell

Attachment: Letter from ACLU to LA City Council, October 29, 2017



STAND FOR JUSTICE

Via email

October 29, 2017

Mayor Eric Garcetti
200 N. Spring St.
Los Angeles, CA 90012

Councilmember Gilbert Cedillo
Councilmember Paul Krekorian
Councilmember Bob Blumenfield
Councilmember David E. Ryu
Councilmember Paul Koretz
Councilmember Nury Martinez
Councilmember Monica Rodriguez
Councilmember Marqueece Harris-Dawson
Councilmember Curren D. Price, Jr.
Councilmember Herb J. Wesson, Jr.
Councilmember Mike Bonin
Councilmember Mitchell Englander
Councilmember Mitch O'Farrell
Councilmember Jose Huizar
Councilmember Joe Buscaino
Los Angeles City Council
200 N. Spring St.
Los Angeles, CA 90012

RE: City Council File 17-1127

Dear Mayor Garcetti and City Council Members:

I write on behalf of the American Civil Liberties Union of Southern California ("ACLU SoCal") regarding the proposed ordinance before the Los Angeles City Council that would make it illegal to carry items to a protest or public demonstration that are both central to the public's ability to express itself under the First Amendment and legal when carried at other public events. The ACLU SoCal strongly opposes the proposed ordinance and urges City Council to reject the ordinance for the reasons described below.

First, this ordinance is a red herring. The focus in both City Council proceedings and in statements by City Council to the media has been on disallowing "weapons" at protests. But many if not most of the items properly characterized as "weapons"—guns, knives, nunchuks,

etc.—are already illegal to possess publicly, whether at a protest or not.¹ This ordinance does not impact the legality of those items and is unnecessary to protect the public from individuals who would use these items to inflict harm at protests or other public demonstrations. Councilmember Englander, who proposed this ordinance, as well as others, have employed the rhetoric of protecting the public from dangerous weapons at protests, but the primary effect of this ordinance above and beyond existing law is to criminalize the possession of signs that are not sufficiently “soft” or commonly-possessed items such as soda bottles.

Second, we have grave concerns about the legality of an ordinance that criminalizes items at protests that are not regulated at other public gatherings and are central to the public’s ability to engage in protected First Amendment expression, such as signage. The City Attorney represented to the Public Safety Committee that Los Angeles Municipal Code Section 55.07—the section amended by this ordinance—previously had been upheld against First Amendment legal challenges and the proposed ordinance represents a mere expansion of the already-existing list of prohibited items, with each new item supported by a factual basis for its inclusion. This is a tenuous position. The existing law prohibits one item: wood exceeding certain dimensions. The proposed ordinance would add eleven new categories of prohibited items, most of which exclude multiple items. The City Council file includes only a short summary of violent incidents that occurred at past demonstrations—none of which took place in Los Angeles, nor involved many newly-prohibited items in the proposed ordinance. The challenge presented in *Vlasak v. Superior Court*, 329 F.3d 683 (9th Cir. 2003)—the case apparently referenced by the City Attorney—was therefore based on an entirely different factual record and an entirely different set of prohibitions. The suggestion that the ruling in *Vlasak* renders the proposed ordinance legally sound is not credible.

Finally, the practical effect of this ordinance will not only be to unnecessarily stifle expression that is at the heart of the First Amendment, but also to unnecessarily criminalize engaging in commonplace behavior that individuals will not reasonably know has been legislated into a public safety risk. At the Public Safety Committee hearing, Councilmember O’Farrell reviewed the list of proposed prohibited items and recognized that many of those items are crucial tools of expression. He specifically noted that he “could not imagine a successful Women’s March without many of these prohibited items.” This is precisely why this ordinance should not be approved.

Councilmember O’Farrell additionally went on to express concern that—because of the commonplace nature of the prohibited items and their centrality to expressive speech—undocumented residents of Los Angeles may not realize that they are breaking the law when they engage in demonstrations on “DACA” or other issues that are central to their lives. The ordinance’s statement that pre-arrest warnings will be given “when feasible” is insufficient to protect against this likely result. Serious immigration consequences should not result from the peaceful exercise of anyone’s First Amendment right. And even for those who do not fear

¹ See, e.g., Cal. Penal Code §§ 25850(a); 25400; 24410; 24510; 33215; 31500; 24610; 24710; 33600 (all prohibiting types of firearms in public); 20310; 21110; 20410; 20610; 20910; 20510; 21310 (all prohibiting types of knives, swords, or other bladed devices); 21810 (prohibiting nunchucks or martial arts weapons).

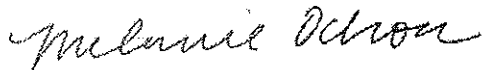


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immigration consequences, arrest and possible criminal prosecution, even for a misdemeanor, is a serious outcome for any Angeleno. City Council should not criminalize activity and items—particularly only when possessed in conjunction with protected First Amendment activities—that do not independently pose a risk to public safety and are central to an individual’s ability to exercise his or her rights.

For these reasons, ACLU SoCal urges the City Council to reject the proposed ordinance.

Sincerely,



Melanie Ochoa
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