

*Via email*

October 24, 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

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 transform a technical violation of the use and access rules of city facilities into a criminal trespass (Council File 17-0363). We urge City Council to reject the proposed ordinance for the reasons described below.

Although styled as a public safety ordinance, it would do nothing to improve public safety. There are already laws that prohibit conduct that actually threatens the safety of the public or prohibits the functioning of public bodies—which is what the City Council has claimed this ordinance was intended to do. This ordinance also goes far beyond the stated need to maintain order in public meetings, as it would also allow unelected bodies, such as the Board of Library Commissioners, the power to enact *any* usage rules for all public facilities that would have the force of criminal law and could subject individuals who violate these rules to up to six months in imprisonment. This ordinance is also unquestionably contrary to the public’s interest and would give police the authority and unfettered discretion to stop, detain, arrest, and potentially use force against individuals who are peacefully using public facilities but are potentially violating minor

rules regarding their use or access. This law is unnecessary and has the potential to cause serious harm.

**1. Angelenos want to reduce criminalization, not create new and unnecessary criminal penalties.**

This ordinance is directly against the clearly stated preferences of Angelenos—and Californians at large—who want to reduce, not increase, the use of police and jails to address issues that do not pose a public safety risk. The adoption of this ordinance would undermine the steady progress of criminal justice reform throughout California, in which the public and legislators have sought to decriminalize conduct that does not pose an actual threat, keep people out of prison, and avoid unnecessary interactions with the criminal justice system. By making new crimes out of conduct that is too trivial to constitute a violation of the many existing laws that already prohibit disruptive, threatening, or dangerous behavior, the City Council would undermine this progress and work against the express interests of the public.

**2. This ordinance is unnecessary because existing laws already protect the safety of the public and public officials, as well as the functioning of government business.**

While some city councilors are on record arguing that this ordinance is necessary to prevent individuals from “disturbing” City Council business,<sup>1</sup> laws already exist that could be, and are, used to prevent or stop individuals from engaging in acts that unnecessarily disrupt public meetings.

For instance, Elections Code Section 18340, makes it a misdemeanor to “willfully hinder[] or prevent[] . . . public meetings for the consideration of public questions,” through threats, intimidations or violence. And Cal. Penal Code Section 403, is a catch-all provision that makes it a misdemeanor offense to “willfully disturb[] or break[] up any assembly or meeting,” other than religious meetings or meetings already covered under Elections Code Section 18340.<sup>2</sup> Another statute, Penal Code 407, is often utilized by the Police Commission to call an unlawful assembly in order to calm, or disperse, a crowd that is engaged in lawful acts of public comment in a “boisterous, or tumultuous manner.” There are also laws that would apply to various public spaces, including prohibitions on littering,<sup>3</sup> loitering in areas where children congregate,<sup>4</sup> or remaining on public property after hours, after being instructed to leave.<sup>5</sup>

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<sup>1</sup> Elizabeth Chou, “LA City Council proposes trespassing citations amid complaints about ‘gadflies,’” L.A. Daily News (April 5, 2017), available at <http://www.dailynews.com/2017/04/05/la-city-council-proposes-trespassing-citations-amid-complaints-about-gadflies/>. “LA City Council Passes Motion That Would Make Chambers Disruptions a Trespassing Charge,” CBS LOS ANGELES (April 5, 2017), available at <http://losangeles.cbslocal.com/2017/04/05/la-city-council-considers-making-chamber-disruptions-a-trespassing-charge/>.

<sup>2</sup> See *CPR for Skid Row v. City of Los Angeles*, 779 F.3d 1098 (9th Cir. 2015), which held that Penal Code Section 403 does not apply to the more narrow set of disturbances also covered by Election Code Section 18340.

<sup>3</sup> Cal. Penal Code § 374.4.

<sup>4</sup> Cal. Penal Code § 653b.

<sup>5</sup> Cal. Penal Code § 602(q).

While incidents have occurred involving conduct that city councilors have found to be offensive or threatening, the fact that individuals alleged to pose a safety threat could be arrested, and other remedies obtained by city councilors,<sup>6</sup> illustrates that there is no need for this additional law. Moreover, if city councilors actually fear their safety because of threats made by members of the public, existing laws already criminalize threats generally,<sup>7</sup> threats against public officials,<sup>8</sup> the commission of any violence regardless of its location,<sup>9</sup> and harms against their own personal property.<sup>10</sup> This new law would provide no additional needed protection.

Finally, if there is specific conduct that actually poses a threat to the public's safety that is not already captured under the many existing criminal laws, then the City Council should adopt an ordinance that addresses that specific conduct. It should not adopt this sweeping new ordinance that poses no limits on the types of rules that can be created, does not cabin the its application to rules to those that are necessary to public safety, and delegates authority to create the laws to a variety of unelected bodies with no expertise on criminal law or public safety.

### **3. Use of this ordinance to elevate the use and access rules of public meetings to criminal violations is an abuse of power.**

To the extent the City Council wants to grant public officials the power to call for the arrest of individuals for violations of the existing rules of decorum, such as using their one or two minutes of public comment to speak on something it deems to be off topic, or to prohibit them from referring to any city councilor by name,<sup>11</sup> this would be an abusive use of power.

At meetings for the Board of Police Commissioners, citizens have already been arrested for minor infractions of their rules. For example, Black Lives Matter-LA organizer and California State Los Angeles Professor Melina Abdullah was arrested for speaking 20 seconds over the 2-minute public comment limit, and an 81-year-old was arrested and dragged away from the podium for speaking at the beginning of his allotted time on a subject the Commission deemed off-topic.<sup>12</sup> Neither was ultimately charged with a crime, because they had violated no law. This ordinance seeks to change that.

And not only would this subject individuals attempting to petition their government to up to six months in jail for the technical breach of the rules of decorum, but it also risks that individuals may be arrested and charged with the additional crime of resisting or obstructing an officer<sup>13</sup> for anything less than immediate and complete compliance with their orders—including passive resistance such as enquiring about the basis for their arrest.

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<sup>6</sup> See, e.g., “Wayne Spindler, frequent LA City Hall critic, faces gun charge,” L.A. DAILY NEWS (March 30, 2017) available at <http://www.dailynews.com/2017/03/30/wayne-spindler-frequent-la-city-hall-critic-faces-gun-charge/>.

<sup>7</sup> Cal. Penal Code § 422.

<sup>8</sup> Cal. Penal Code § 71.

<sup>9</sup> See, e.g., Cal. Penal Code § 240 (assault); § 242 (battery).

<sup>10</sup> See, e.g., Cal. Penal Code § 594 (criminalizing vandalism against public property).

<sup>11</sup> Rules of the Los Angeles City Council 2-3 (December 2016), available at [http://www.clerk.lacity.org/sites/g/files/wph606/f/lacityp\\_026042.pdf](http://www.clerk.lacity.org/sites/g/files/wph606/f/lacityp_026042.pdf).

<sup>12</sup> PM Beers, “LAPD Arrest 81-Year-Old For Speaking ‘Off-Topic’ At Public Forum,” MINTPRESS NEWS (June 24, 2016), available at <http://www.mintpressnews.com/lapd-arrest-81-year-old-free-speech/217716/>.

<sup>13</sup> Cal. Penal Code § 148.

While the City Council may prefer that Angelenos express thoughts and concerns that narrowly fit its definition of the issues at hand, or are not individually identified as a subject of a citizen's displeasure, these public expressions should not be the basis for criminal charges. They do not pose a real threat to the proper functioning of government business and should not be elevated to crimes. Part of the duty of public officials is to bear the brunt of the public's displeasure as well as expressions of gratitude and satisfaction. City Council's irritation is not a public safety threat, and the serious consequences of criminal law should be limited to conduct that actually poses a risk to the safety of others.

**4. This ordinance would authorize and encourage the discriminatory enforcement of criminal trespassing law.**

Even limited to its application in public meetings—the stated purpose of this ordinance—this law creates a significant threat that it will be applied discriminatorily based on the subject's viewpoint. In reporting on this motion and the City Council's concerns regarding alleged disorder at public meetings, there have been references made to individuals whose comments or presentation are deemed offensive to councilmembers.<sup>14</sup> This suggests that it is the content of individuals' comments and not merely the violation of any technical rule that is the cause for concern and impetus for this motion, which is constitutionally impermissible.

As Councilmember Englander specifically noted, “it will be up to the police to decide whether a person gets cited for trespassing.”<sup>15</sup> While the police, appropriately, will not enforce every violation of these rules, ACLU SoCal has serious concerns that this will ultimately lead to discrimination against those who express views in opposition to the public bodies being addressed. If the use rules related to public meetings mimic or are consistent with councilmembers' stated concerns regarding decorum violations, the ACLU SoCal has serious doubt that such rules could meaningfully be enforced without concern for the viewpoint of the speaker. In public meetings speakers routinely do things such as exceed their allotted time or address individual city councilors. It is inconceivable that an individual who violates these rules while praising the efforts of their councilmember would be arrested by an officer. Conversely, individuals who spend their time critiquing the councilmember's conduct or express views the City Council would prefer not to hear would almost unquestionably be more likely to be subject to the strict enforcement of the rules and, ultimately, arrest. A law that criminalizes common, non-dangerous conduct, and places full discretion in the hands of officers—and perhaps at the direction of the public bodies being critiqued—is ripe for misuse based on the viewpoint of the speaker.

And beyond its application to public meetings, we have grave concerns regarding its enforcement on other city property. The Los Angeles Police Department (“LAPD”) has a long history of subjecting black and Latino residents to stops and searches more frequently than

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<sup>14</sup> “LA City Council Passes Motion That Would Make Chamber Disruptions a Trespassing Charge,” CBSLA.com (April 5, 2017), available at <http://losangeles.cbslocal.com/2017/04/05/la-city-council-considers-making-chamber-disruptions-a-trespassing-charge/>.

<sup>15</sup> “LA City Council moves to silence disruptive audience members,” 89.3 KPCC (April 5, 2017), available at <http://www.scpr.org/news/2017/04/05/70533/la-city-council-moves-to-silence-disruptive-audien/>.

whites—despite evidence that white residents are more likely to be carrying contraband.<sup>16</sup> By authorizing the criminalization of petty behavior that is likely to be common among those using public facilities, this law creates more opportunities for the racially-disparate application of criminal law. Just like existing laws, it will likely be used disproportionately to justify the stops, detention, and arrest of black and Latino residents. The fact that this law also fails to serve any public safety goal despite this risk of significant harm to members of these communities makes the City Council’s support of this ordinance particularly reckless.

**5. This ordinance would grant bodies with no authority to promulgate law for the City of Los Angeles the power to create rules with the force of criminal law without limitation and unrelated to public safety.**

The proposed ordinance also provides no limitation on what may become criminal law, and allows City Council to abdicate its sole responsibility to create new laws that govern conduct within the City of Los Angeles.

The Los Angeles City Charter specifies that “[a]ll legislative power of the City . . . is vested in the Council and shall be exercised by ordinance.”<sup>17</sup> Rather than creating an ordinance that would directly address the public safety concerns the City Council claims exist, the proposed ordinance allows any new rules regarding the use and access to facilities created by various unelected bodies, including the Board of Library Commissioners and the Board of Recreation and Park Commissioners, to have the force of law. This is essentially delegating to these bodies the power to create new criminal laws despite the total lack of legal authority to do so.

There are also no limits on the criminal law that can be created pursuant to this ordinance. The rules the ordinance would elevate to crimes are not even required to relate public safety—the only requirement is that “signs [containing the rules] . . . be posted.” Under such a broad grant of power, the posted rules could be as trivial as limiting the amount of time spent on the internet at public libraries or taping balloons to a park bench. Given the trivialness of the decorum rules that City Council has indicated it would like to enforce there is no reason to believe that the enacted rules will be limited to behavior that actually disturbs the peace or endangers public safety.

It does not serve the public interest to punish by arrest, fine, and imprisonment people whose greatest crime is celebrating a family birthday at the park or researching job opportunities online at the local library. And even if the ordinance is not immediately put to such effect, the fact that its breadth would permit such an outcome is danger enough that the City Council should not approve this ordinance.

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<sup>16</sup> See, e.g., Ian Ayres & Jonathan Borowsky, “A Study of Racially Disparate Outcomes in the Los Angeles Police Department” (October 2008), available at <https://www.aclusocal.org/sites/default/files/wp-content/uploads/2015/09/11837125-LAPD-Racial-Profiles-Report-ACLU.pdf> (noting that “[i]t is implausible that higher frisk and search rates are justified by higher minority criminality, when these frisks and searches are substantially less likely to uncover weapons, drugs or other types of contraband.”).

<sup>17</sup> L.A. City Charter Art. II, § 240.

**6. This ordinance has the potential to turn the quiet enjoyment of public property into opportunities for unnecessary, and potentially deadly, encounters with the police.**

This law not only risks subjecting individuals to unnecessary criminal penalties for minor infractions, but also creates the potential for additional harm by creating more opportunities for the police to stop, detain, and potentially use force against individuals who are peacefully existing in public spaces.

All too often, encounters with police—especially for communities of color—escalate unnecessarily and result in law enforcement injuring or killing individuals who were not even suspected of violating any law when stopped. The tragic killing of Ezell Ford by LAPD officers who approached and detained Mr. Ford despite lacking any suspicion that he was committing or had committed a crime is a painful example of how unnecessary stops can escalate to tragedy.<sup>18</sup> But he is not alone.<sup>19</sup> City Council should be finding ways to *decrease* the potential for deadly encounters with officers, not create inconsequential new crimes that would provide officers with a reason—real or pretextual—to engage individuals who are not otherwise causing a disturbance, public safety risk, or engaged in existing criminal activities.

We urge City Council and its subcommittees not to vote in favor of adopting this unnecessary and potentially dangerous ordinance.

Sincerely,

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Staff Attorney in Criminal Justice and Police Practices  
ACLU of Southern California

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<sup>18</sup> “LA police officers who fatally shot Ezell Ford will not face charges,” THE GUARDIAN (January 24, 2017), available at <https://www.theguardian.com/us-news/2017/jan/24/ezell-ford-police-shooting-no-charges-lapd>.

<sup>19</sup> See, e.g., Rob McMillan, “Pomona PD faces wrongful death, excessive force claims, ABC7 (November 1, 2011), available at <http://abc7.com/archive/8415217/> (Andres Avlia killed by Pomona police after encountering him asleep in a car); Robert Faturechi, “Parents of man shot dead by sheriff’s deputy awarded \$7.5 million” L.A. TIMES (June 14, 2013), available at <http://articles.latimes.com/2013/jun/14/local/la-me-0615-shooting-verdict-20130615> (Robert Thomas, Jr. killed by Los Angeles sheriff after approached him standing outside of party).