



*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.<sup>1</sup> 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

<sup>1</sup> 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).



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,



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