



June 15, 2020

**Via Electronic Mail**

Howard Chan  
City Manager  
915 I Street, Fifth Floor  
Sacramento, CA 95814

Re: Sacramento Curfew Order Violation Citations

Dear Mr. Chan:

We represent Black Lives Matter Sacramento, the Sacramento Regional Coalition to End Homelessness, and Katherine Martinez Orellana. We seek to defend the rights of the 72 individuals who were arrested and charged for violating the City's June 1 curfew order. Our position has the support of Official Sacramento Activists, Anti Police-Terror Project, AYA: A Radical Black Healing Collaborative, Black Zebra Productions, and other Black journalists, media, and activists. We request herein that Sacramento publicly announce that it will drop all charges against anyone who purportedly violated the Order.

This correspondence is a follow-up to our letter dated June 4 and your response on June 5. We were pleased to learn that you are "in complete agreement that Sacramentans, especially our communities of color and organizations such as Black Lives Matter Sacramento should demonstrate and should seek to hold all levels of government responsive and accountable."<sup>1</sup> It is surprising and unfortunate, then, that despite this complete agreement, Sacramento continues to pursue charges against those that were cited for alleged violations of the Order. Since you did not respond to our request for a telephone call to discuss this important issue, this letter explains our position and request.

For centuries, police officers in this country have targeted Black people through racially-discriminatory policing that has too often led to reckless and violent deaths. Over the last several months, Black people have been disproportionately killed by the effects of COVID-19. At the same time, Black people have watched the police murder other Black people, compounding the traumatic effect of both. Most recently, on May 25, 2020, Derek Chauvin, a Minneapolis police officer, murdered George Floyd by pressing his knee into Mr. Floyd's neck, obstructing his breathing for nearly nine minutes.

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<sup>1</sup> Howard Chan Letter to Abre' Conner (June 5, 2020).

The murder of Mr. Floyd and Breonna Taylor, along with the long history of police violence against Black people, including Black trans people, sparked widespread outrage about racial disparities in this country. Since Mr. Floyd's death, public demonstrations and protests have occurred in cities throughout the nation. These protests demand justice and constitute an exercise of rights squarely protected by the First Amendment.

Despite the largely peaceful nature of the demonstrations in Sacramento, the City responded with force. Five hundred National Guard troops were deployed to control protesters. Law enforcement authorities used tear gas, rubber bullets, pepper bullets, and other "non-lethal" methods to disperse crowds at protests held from May 29 to May 31, causing significant injuries. A female protestor was permanently blinded in one eye when law enforcement shot her in the face with a rubber bullet during the Oak Park protest on May 29. An 18-year-old suffered a broken jaw when law enforcement fired rubber bullets at protesters in front of the county jail on May 30. At least one journalist was also injured at the protests, and the Sacramento police harassed Black Zebra Productions, a community engaged media organization.<sup>2</sup>

Instead of confronting or even acknowledging the excessive force used by police officers, the City Council quickly and abruptly issued the Order, suppressing the ability of protesters to demonstrate against "systemic racism."<sup>3</sup> The Order imposed a sweeping ban on public assembly, free expression in all public forums, and movement for most Sacramento residents between 8 p.m. and 5 a.m. These bans remained in effect until June 7.<sup>4</sup> Rather than discourage aggressive policing tactics, the Order granted law enforcement officers even greater power to interfere with protestors' rights. Thus, the Order only worsened the ongoing violence by increasing the risk of racially-discriminatory policing and police brutality.

The Order was unconstitutional and disparately applied. As described in greater detail below and in our letter dated June 4, the Order violated the constitutional rights to freedom of speech, assembly, movement, and the most basic notice requirements. Further, the Order was itself discriminatory, because it was intended to inhibit lawful anti-racist demonstrations, and was enforced in an unequal manner against people of color. Indeed, this was the first curfew the City of Sacramento ever imposed,<sup>5</sup> which further highlights the Order's inequitable nature and effect. For example, the City did not impose a curfew when hundreds of mostly white people recently gathered outside the State Capitol in Sacramento to protest Governor Newsom's

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<sup>2</sup> These extreme policing measures were also a wasteful use of Sacramento's resources. The City should reduce police budgets and reallocate those funds to crucial in community programs and services, as Sacramento residents have recently demanded.

<sup>3</sup> Mayor Darrell Steinberg issues statements on killing of George Floyd and Sacramento protests, Fox40 News (May 30, 2020), <https://fox40.com/news/local-news/mayor-darell-steinberg-issues-statement-on-killing-of-george-floyd-and-sacramento-protests/> (Mayor Steinberg stating, "Racism is real. Implicit bias is real. . . . Let us demand an end to systemic racism.").

<sup>4</sup> On June 6, Sacramento announced that the City Council had voted to "immediately" end the curfew, but also noted that curfew would expire at midnight on Saturday. Much like the lack of notice the City provided when imposing the Order, this inconsistent messaging about the expiration of the curfew also failed to adequately notify Sacramento residents about the terms of the Order. See City of Sacramento Lifts its Curfew, Ends Deployment of National Guard, Sacramento City Express (June 6, 2020), <https://sacramentocityexpress.com/2020/06/06/city-of-sacramento-lifts-its-curfew-ends-deployment-of-national-guard/>.

<sup>5</sup> Chan Letter to Conner (June 5, 2020).

COVID-19 stay-at-home order. The City should not exacerbate the mistake of imposing the Order by penalizing individuals who may have violated it.

Los Angeles County District Attorney Jackie Lacey recently announced that she will not file charges against any protester for curfew violations or failure to disperse.<sup>6</sup> District Attorney Lacey said, “I believe whole-heartedly in free speech and support the right of protesters to demonstrate peacefully against historic racial injustice in our criminal justice system and throughout our nation.”<sup>7</sup>

Sacramento City Attorney Susana Alcalá Wood should take a similar approach and publicly announce that the City will drop all pending charges against curfew violators.

### **The Curfew Order Was Unconstitutional**

The Order was not consistent with the freedoms guaranteed by the United States and California Constitutions. Because the Order was unconstitutional, any violation thereof should not be punished.

***The Order Violated Freedom of Speech.*** The Order restricted free speech by suppressing all demonstrations occurring after 8 p.m. across Sacramento. Because it was designed to quell political protests, the Order had a “disproportionate burden upon those engaged in First Amendment activities,” and is thus subject to First Amendment scrutiny. *Nunez v. City of San Diego*, 114 F.3d 935, 944 (9th Cir. 1997) (citing *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 704 (1986)). To satisfy First Amendment requirements, a curfew must both be narrowly tailored and allow for ample alternative channels of communication. See *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 it restricts *far* more speech than necessary to achieve the City’s aim. Since June 1, there have been 78 total arrests during demonstrations in Sacramento. 72 arrests were made for curfew violations. Only 6 arrests were made for other charges (e.g., vandalism and resisting arrest), and a portion those 6 arrests were completely unrelated to the protests (e.g., intoxication and an outstanding warrant). This data establishes that the number of acts of property damage or violence by protesters was trivial in comparison to the amount of nonviolent protest. Because the demonstrations did not involve actual or imminent mass violence, “there [were] a number of feasible, readily identifiable, and less-restrictive means of addressing” the City’s interests. *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 950 (9th Cir. 2011). Accordingly, the Order was “not narrowly tailored” to serve those interests. *Id.*

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<sup>6</sup> Press Release, District Attorney Jackie Lacey Will Not File Charges for Curfew Violations, Failure to Disperse (June 8, 2020), <http://da.lacounty.gov/media/news/district-attorney-jackie-lacey-will-not-file-charges-curfew-violations-failure-disperse#:~:text=Los%20Angeles%20County%20District%20Attorney,in%20the%20interest%20of%20justice>.

<sup>7</sup> *Id.*

***The Order Violated Freedom of Movement.*** The Order also violated the Constitution’s protection for the “fundamental right of freedom of movement.” *Nunez*, 114 F.3d at 944. 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. *Id.* at 946 (applying strict scrutiny to curfew order even though it only applied to minors). The Order’s restrictions on movement were not narrowly tailored. Apart from its geographic breadth (the entire city), the Order applied to entirely innocuous movement. The Order and its enforcement deterred protestors and caused consternation among Sacramento residents who needed to travel to their place of work or other essential locations during the curfew hours. For example, the Order made Ms. Martinez Orellana fear going to work. Moreover, individuals who are unhoused were not exempt from the Order,<sup>8</sup> and were likely to be outside during curfew hours because they often had nowhere else to go. The Constitution does not permit such a widespread ban on civil liberties. *Cf. id.* at 948 (striking down curfew order because “it does not provide exceptions for many legitimate activities.”).

***The Order Contained Insufficient Notice.*** Both the Fifth and Fourteenth Amendments prohibit deprivations of liberty without “due process.” Due process requires that officers seeking to enforce curfews provide notice to the general population of their intent to do so. *See e.g., In re Juan C.*, 28 Cal. App. 4th 1093, 1097 (Cal. Ct. App. 1994). Mayor Darrell Steinberg announced the Order less than a few hours before it went into effect, meaning that many Sacramento residents were unaware of the Order before it was enforced. For example, when Ms. Martinez Orellana attended an anti-police brutality protest in downtown Sacramento on June 1, where she was arrested for violating the Order, she was not aware that city officials had ordered a curfew be enforced that night. She faced legal consequences for non-criminal activity, without knowing she was violating the law. Other demonstrators who attended protests or prayer gatherings on June 1 similarly stated that they did not know about the Order. The City’s failure to provide reasonable and timely notice of the curfew rendered the Order constitutionally deficient.

***The Order Was Unconstitutionally Vague.*** The Order contained vague and ambiguous exemptions for certain groups. Individuals subject to the Order had to establish their exempt status by, for example, proving they were going to or from work. But law enforcement officers had unfettered discretion to enforce the Order, including the authority to determine whether an individual met an exemption. Such vague standards created a high likelihood of disparate application and enforcement.

### **The Curfew Order Was Disparately Applied and Disproportionately Harmed the Black Community**

The Order, which was both unnecessary and unprecedented, was designed to subdue and intimidate the Black community. Curfews have long been imposed against marginalized people

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<sup>8</sup> *See* Resolution No. 2020-0153 (June 1, 2020) (“Order”), ¶¶ 11-12 (listing a few narrow exemptions and being unhoused is not one of them).

and anti-racist movements.<sup>9</sup> The City issued the Order in direct response to protests against racial injustice and unreasonable police violence against Black people.<sup>10</sup> During police accountability demonstrations held in Sacramento from May 29 to May 31, police officers used tear gas, rubber bullets, pepper bullets, and other “non-lethal” methods to disperse crowds. Particularly when viewed in light of that excessive force, the Order increased the potential for and fear of racially-discriminatory policing and police brutality. That fear was felt throughout the community. Out of concern for the safety of Black activists, Black Lives Matter Sacramento did not plan any new demonstrations while the Order was in effect.

The inequity of the Order itself is made even clearer by your acknowledgement that it was the first curfew Sacramento ever issued.<sup>11</sup> Indeed, in April and May 2020, hundreds of mostly white people gathered outside the State Capitol in Sacramento to protest Governor Gavin Newsom’s stay-at-home order to slow the spread of COVID-19, yet the City did not impose a curfew order. The City’s decision to impose its *first* curfew order in response to protests against racial inequality highlights the Order’s prejudicial nature.

The Order was also disparately applied. Ms. Martinez Orellana, a Latinx person, was arrested for violating the Order. During her arrest, she observed several white bystanders and passersby in the vicinity, but none were arrested for violating the Order. Ms. Martinez Orellana did, however, observe the arrest of another Latinx person.

### **The City Unreasonably and Excessively Punished Alleged Violations of the Curfew Order**

Many protestors were incarcerated after an arrest for purportedly violating the Order, subjecting them to unsanitary, unsafe conditions. It is widely known that jails are cramped and dirty,<sup>12</sup> and incarcerated people are at grave risk of contracting COVID-19.<sup>13</sup> California recently granted early release to 3,500 incarcerated individuals serving terms for nonviolent crimes in an attempt to reduce overcrowding in state prisons during the COVID-19 pandemic,<sup>14</sup> and Sacramento has released 1,100 inmates by order of the courts to help prevent the spread of COVID-19 inside jail populations.<sup>15</sup> Despite these efforts, many protestors were placed in crowded, dirty jail cells after being arrested for allegedly violating the Order. For example, one

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<sup>9</sup> Oakland’s curfew in context: The long history of curfews against anti-racist movements, Berkleyside (June 3, 2020), <https://www.berkeleyside.com/2020/06/03/oaklands-curfew-in-context-the-long-history-of-curfews-against-anti-racist-movements>.

<sup>10</sup> See Order cl. A (naming the “large demonstrations protesting the death of George Floyd by Minnesota Police Officers” as the reason for imposing the Order).

<sup>11</sup> Chan Letter to Conner (June 5, 2020).

<sup>12</sup> See Health, Penal Reform International, <https://www.penalreform.org/issues/prison-conditions/key-facts/health/>.

<sup>13</sup> Lauren-Brooke Eisen, Letter to Governors: Use Your Executive Authority to Release Vulnerable People From Incarceration Who Pose No Threat to Public Safety, Brennan Center for Justice (Apr. 6, 2020), <https://www.brennancenter.org/our-work/research-reports/letter-governors-use-your-executive-authority-release-vulnerable-people>.

<sup>14</sup> California to release 3,500 inmates early as coronavirus spreads inside prisons, Los Angeles Times (Mar. 31, 2020), <https://www.latimes.com/california/story/2020-03-31/coronavirus-california-release-3500-inmates-prisons>.

<sup>15</sup> Sacramento County Jail Inmate Released After Testing Positive for Coronavirus, CBS Sacramento (May 7, 2020), <https://sacramento.cbslocal.com/2020/05/07/sacramento-county-jail-inmate-released-after-testing-positive-for-coronavirus-draft/>.

protestor was placed in a cell with three other men, where it was impossible to engage in social distancing. There was no bed available to him, so he was forced to sleep on the floor of the cold cell, using his shoes as a pillow. He and his three cellmates were later moved to a different jail cell, which was covered in food debris, blood smeared on the walls, and what appeared to be feces. The cell was also extremely cold; another man was uncontrollably shivering. The jail did not provide any sanitation supplies.

Fines imposed for violating the Order will also have a disproportionate effect on low-income people. Fines can have a significant impact on people already struggling to make ends meet, including unhoused persons who were not exempt from the Order. And low-income individuals are likely experiencing even greater financial difficulties in light of the COVID-19 pandemic. Sacramento City and County have recognized that monetary penalties can have a harmful effect on disadvantaged communities, and elected to participate in fine and fee reform.<sup>16</sup> Consistent with that initiative, the City Attorney should drop all charges and associated fines against individuals who purportedly violated the Order.

Finally, incarcerated protestors also faced unreasonable bail amounts after being charged for crimes related to violating the Order. Since the Order was unconstitutional and unjust, protestors who allegedly violated the Order should never have been forced to post bail. The City should therefore publicly state that any bail bonds contracts resulting from alleged violations of the Order are at odds with public policy, and thus unenforceable.

### **The City Attorney Should Publicly Decline to Prosecute All Alleged Violations of the Order**

We request that the City Attorney issue a public statement that Sacramento will drop all charges against anyone who purportedly violated the Order, including all fines and bail obligations associated with the alleged violations. This position would be in the best interest of our community, and would be consistent with how other communities, such as Los Angeles County, are treating its citizens. The 72 peaceful protestors who received citations for curfew violations deserve public notification and vindication from these unjust and unfortunate charges. We would be happy to work on the language of that announcement with you.

If the Order violation charges are not dropped, then representation will be made available to every individual who received a citation.

Thank you for your prompt consideration of these issues. We respectfully ask that you provide a response to the request we have raised in this letter by COB Thursday, June 18.

*[Signature page follows.]*

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<sup>16</sup> Sacramento Looks to Reform Fines and Fees that Disproportionately Affect Disadvantaged Communities, Sacramento City Express (May 27, 2020), <https://sacramentocityexpress.com/2020/05/27/sacramento-looks-to-reform-fines-and-fees-that-disproportionately-affect-disadvantaged-communities/>.

Howard Chan  
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Sincerely,

*/s/ Abre' Conner*

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