

**VIA ELECTRONIC MAIL**

July 7, 2020

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**Re: No Further Prosecution of Curfew Violations**

Dear San Jose City Attorney Doyle:

During constitutionally protected protests reflecting shared outrage about the murder of Black men and women, several dozen individuals were cited for violating the City of San Jose's curfew imposed from May 31 to June 4, 2020.<sup>1</sup> Those curfew violations are subject to punishment under Title 8 of the Municipal Code, 8.08.260, meaning that violators could face fines of up to \$500 or time in jail.<sup>2</sup>

We write to request that you—in your capacity as the chief law enforcement officer of San Jose—publicly announce that you will drop any charges already filed for these violations; not file any further charges; and clear any and all records regarding those citations. Several other California jurisdictions already have taken the position we urge here. Alameda County's DA O'Malley emailed us on June 23 that the office would not be prosecuting most of the curfew

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<sup>1</sup> See Declaration of the Director of Emergency Services of the City of San Jose Imposing a Curfew with Limited Exceptions and Superseding the May 31, 2020 Declaration Imposing a Curfew, <https://www.sanjoseca.gov/home/showdocument?id=59288> (June 2, 2020); Jodi Meacham, "San Jose, Santa Clara impose curfews at start of third night of police protests" (May 31, 2020), <https://www.bizjournals.com/sanjose/news/2020/05/31/san-jose-curfew-protests.html>; Maggie Angst, "San Jose to lift citywide curfew on Thursday morning," *Mercury News* (June 2, 2020), <https://www.mercurynews.com/2020/06/02/san-jose-to-lift-citywide-curfew-on-thursday-morning/>.

<sup>2</sup> Jennifer Wadsworth, "DA Won't Prosecute Curfew Violators—But San Jose Might," *San Jose Inside* (June 25, 2020), <https://www.sanjoseinside.com/news/santa-clara-county-da-wont-prosecute-curfew-violators-peaceful-protesters/>; San Jose Muni. Code 8.08.260.

violations. The Sacramento City Attorney has done the same,<sup>3</sup> as has the Los Angeles City Attorney and the Los Angeles County District Attorney.<sup>4</sup>

San Jose's curfew order was unconstitutional, much like the orders other jurisdictions that have decided not to pursue charges after our intervention, such as Sacramento.<sup>5</sup> The curfew imposed a sweeping general ban on the public assembly, free expression in all public forums, and movement. The curfew was not narrowly tailored. *McCullen v. Coakley*, 573 U.S. 464, 495 (2014). The curfew also provided insufficient notice. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). And the curfew was vague and ambiguous as to critical terms, rendering the entirety unconstitutional. *Kolender v. Lawson*, 461 U.S. 352, 358 (1983). Finally, fines imposed for violating the Order would have a disproportionate effect on low-income people, and people of color, which will be exacerbated by the economic effects of the COVID-19 pandemic.

San Jose's enforcement of the curfew order also improperly targeted unhoused people and legal observers, and subjected protesters to unnecessary force and exposed to an increased risk of COVID-19.<sup>6</sup> For example, Vera Sloan was arrested and cited for violating curfew while working as a legal observer on May 31, 2020. That night, at around 9:00 p.m., she was watching a group of officers arrest another person in downtown San Jose when an officer told her to leave the area. She told the officer that she was a legal observer observing arrests. Immediately, the officer yelled a code ("10-15") and numerous officers rushed Ms. Sloan and tackled her to the ground. She was then zip-tied, loaded into the back of a police van, and taken to the Milpitas Mall outside of San Jose with no way to get home. Scott Largent, an unhoused man, was arrested for violating curfew on May 31, 2020. After he informed the officers that he was both unhoused and working as a legal observer, officers again yelled the code and tackled him. Like Ms. Sloan's, his wrists were then zip-tied behind his back and he was driven to the Milpitas Mall, where the police officers dumped him and other arrestees. Mr. Largent emphasized that he was one of numerous legal observers and journalists arrested and then left at the Milpitas Mall. Other arrested protesters emphasized the use of unreasonable force.<sup>7</sup> For instance, San Jose police officers apprehended in an alley one person

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<sup>3</sup> See, e.g., "No Charges Filed Against Those who Broke Sacramento Curfew, Attorney Says", KCRA News (June 30, 2020), <https://www.kcra.com/article/no-charges-filed-against-those-who-broke-sacramento-curfew-attorney-says/33012481#>.

<sup>4</sup> See, e.g., News Release, "June 8, 2020: District Attorney Jackie Lacey Will Not File Charges for Curfew Violations, Failure to Disperse," <http://da.lacounty.gov/media/news/district-attorney-jackie-lacey-will-not-file-charges-curfew-violations-failure-disperse>. Jurisdictions around the country, from Cincinnati and Denver to Miami-Dade County and Manhattan, similarly declared that they will not pursue such charges.

<sup>5</sup> See, e.g., Letter Demands City of Sacramento Drop Charges Against 72 Protesters for Violating Curfew (June 15, 2020), <https://lccr.com/newsroom/news-press-releases/lawyers-committee-for-civil-rights-of-sf-and-aclu-northern-california-demand-the-city-of-sacramento-drop-charges-against-72-protesters-for-violating-curfew/>

<sup>6</sup> The following accounts were collected by ACLU of Northern California and Urban Peace Movement.

<sup>7</sup> Numerous news accounts have emphasized the sheer breadth of police violence against protesters in San Jose, leading to proposed reforms to the city's use of force policies. See, e.g.,

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who was fleeing the mass arrest of protesters in downtown San Jose. Although laying down on the ground, spread-eagled, the person was aggressively detained. One officer put his body weight on the protester's right wrist, causing a hairline fracture, as others struck the person in the back and drove their knees into the person's spine. The person asked several times for medical treatment, but the officers only laughed.

San Jose's rescission of the unlawful curfew on June 4 was a necessary first step. But those who were issued misdemeanor curfew violations continue to face jail time, fines, or both, an unconscionable burden on and retaliation against their exercise of basic rights. The City must take further action to prevent yet more harm.

San Jose adopted its curfew order in response to protests that represent a growing consensus on the need to end centuries-long police brutality against Black people. The protests are a physical representation of the widespread public outrage after police officer Derek Chauvin murdered George Floyd, a 46-year-old Black man, by pressing his knee into Mr. Floyd's neck, obstructing his breathing for almost nine minutes. Mr. Floyd's cruel and senseless murder was of course not the first, but instead followed thousands of previous police killings of Black people. And of course families who have lost loved ones to police in San Jose have been calling out for justice and an end to police violence for generations. And people continue to die at the hands of police nearly every day, including during the protests. We equally condemn and have long advocated against police brutality, racial profiling, and selective enforcement of laws against Black people that result in a disproportionate impact of the criminal justice system on Black lives.

We request a public statement that San Jose will drop all charges against anyone who purportedly violated the Order, including all fines and bail obligations associated with the alleged violations. Further, all records relevant to these arrests should be cleared.

We would be happy to work on the language of that announcement with you. We respectfully ask that you respond to the requests in this letter by Friday, July 10.

Sincerely,

Annie Decker, Staff Attorney  
ACLU of Northern California

Tifanei Ressler-Moyer, Attorney and Thurgood Marshall Civil Rights Fellow  
Lawyers' Committee for Civil Rights of the San Francisco Bay Area

Raj Jayadev & Cecilia Chavez  
Silicon Valley De-Bug

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“San Jose Mayor Proposes Wide-Ranging Police Reform in Light of Excessive Force Complaints” (June 25, 2020), <https://www.msn.com/en-us/news/us/san-jose-mayor-proposes-wide-ranging-police-reform-in-light-of-excessive-force-complaints/ar-BB15WoSw>.

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