



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

San Diego and  
Imperial Counties

August 31, 2020

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*Sent via email*

**Re: Wrongful “Seditious Language” Citations**

Dear Mayor Faulconer, City Council Members, and Chief Nisleit:

I am writing to follow up on my August 6, 2020 [letter](#) addressing our concerns about the City’s “seditious language” ordinance, Municipal Code section 56.30. It was encouraging to see that Chief Nisleit has instructed officers to stop enforcing the ordinance, and that the City Attorney’s office is

preparing a new ordinance to repeal the law.<sup>1</sup> I trust that the City Council will promptly pass that ordinance, and that Mayor Faulconer will sign it. However, while repeal will certainly be a step in the right direction, the City should also take affirmative steps to remedy the harm that it inflicted on all those who were improperly cited under the blatantly unconstitutional ordinance.

In our August 6 letter, we called not only for an immediate halt to enforcement of the ordinance, and for repeal, but also for expunging or seeking judicial expungement of all citations deriving from its previous enforcement, and canceling or refunding any fines imposed under the ordinance. The need to take meaningful action to redress the harms created by enforcement of the ordinance has become even more pronounced now that further reporting has revealed the depth and duration of apparently racially biased enforcement – Kate Nucci’s most recent article about the ordinance notes that dozens of officers have issued citations under the law since July 2013, and that 30 percent of those tickets have been issued to Black San Diegans, who make up only 6.5 percent of the City’s population.<sup>2</sup> We are in a moment where communities around the city, nation, and world are calling for a meaningful reckoning with racially biased policing. Acknowledging inappropriate policing practices is an important part of that reckoning, but the only way to truly begin to repudiate those practices is to make serious attempts to remedy the harm they have inflicted.

In a city with a well-documented history of racial profiling, and where police have shot numerous unarmed civilians in recent years, enforcement of the “seditious language” law is hardly the most serious issue involving biased policing, and our office once again calls upon you to take further steps towards decriminalizing conduct that should never have been unlawful, and otherwise reducing the role of police in Black and Brown communities and ending the criminalization of people within those communities. However, while the unlawful enforcement of this unconstitutional ordinance may not be the most egregious example of troubling police practices in the City, that does not mean that it has not created real harm.

The *Voice of San Diego* has reported that, at least in recent years, the seditious language citations have been issued as infractions rather than misdemeanors, which has meant that they have evaded review within the criminal legal system.<sup>3</sup> While infractions do not directly subject alleged offenders to incarceration, people who fail to pay associated fees or fines may face hundreds of dollars in additional civil penalties, leading to potential wage garnishment and bank levies, and they may even be subject to the issuance of a warrant and arrest for charges resulting from a failure to pay or to appear in court. Even a single infraction citation may create extreme hardship, but reporting indicates that some individuals were repeatedly targeted for enforcement of the seditious language law. One individual was ticketed for this offense on five separate occasions by the same officer, in what can only be seen as an example of systematic harassment and punishment for engaging in constitutionally protected speech or expression.<sup>4</sup>

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<sup>1</sup> Kate Nucci, “SDPD Says it Will Stop Enforcing Seditious Language Law,” *Voice of San Diego*, August 17, 2020, <https://www.voiceofsandiego.org/topics/public-safety/sdpd-says-it-will-stop-enforcing-seditious-language-law/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Mayor, City Council Members, Chief of Police

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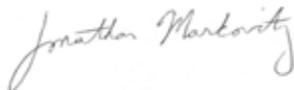
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This kind of enforcement can have disastrous consequences. While we do not know the life circumstances of any of the people who were wrongfully cited under the seditious language ordinance, the City has a long, shameful, and ongoing history of using infractions as a way to target some of the poorest and most vulnerable members of our community, and it would not be surprising to learn that the history of seditious language ordinance enforcement fits into that pattern, which would serve only to exacerbate a cycle of criminalization and poverty.<sup>5</sup>

Now is the time for the City to take stock of the harm it has inflicted. No one should continue to suffer because of past enforcement of an unconstitutional law, so, at the very least, the City should identify every individual who was cited under the seditious language law and ensure that their records have been expunged. This is true not only for the initial charge, but also for any related offenses, such as failure to appear or failure to pay. The City should also provide full compensation for any unconstitutionally assessed fees or fines that were paid (again, for the initial charge and any related offenses), and for any related expenses that people who were unlawfully targeted have incurred as a result of this unlawful enforcement. Most importantly, the City should acknowledge that enforcement of the seditious language law is only one of countless examples where problematic policing has harmed the very communities SDPD claims to serve, and should use this as an opportunity to begin to bring about the kinds of changes necessary to ensure a measure of true justice.

Thank you for your attention, and please let me know if you have any questions.

Sincerely,



Jonathan Markovitz  
Staff Attorney

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<sup>5</sup> See, e.g., Cody Delaney, “San Diego Police Increase Ticketing Of The Homeless During The Pandemic,” Homeless Perspective, May 26, 2020, (“During the coronavirus pandemic, San Diego police have issued more than twice as many tickets for illegal lodging — an infraction largely directed at homeless people — compared to the same time last year, according to data inewsource obtained.”), <http://homelessperspective.com/2020/05/29/san-diego-police-increase-ticketing-of-the-homeless-during-the-pandemic/>.