Law Office of
Jerold D. Friedman
defensio omnibus pro justitia®

(213) 536-1244
(281) 667-3506 fax

19744 Beach Blvd. #390, Huntington Beach, CA 92648
lawoffice.jdf@gmail.com

October 14, 2018

Eric Garcetti, Mayor
John Lewis, Director of L.A. Zoo
Los Angeles Zoo & Botanical Gardens
5333 Zoo Drive
Los Angeles, CA 90027

SENT by E-MAIL mayor.garcetti@lacity.org and denise.tamura@lacity.org

CEASE AND DESIST

Re.: Free Speech at Los Angeles Zoo

Dear Mayor Garcetti and Director Lewis,

My law office represents THE ELEPHANT GUARDIANS OF LOS ANGELES and several individuals who demonstrate and petition on behalf of the Los Angeles Zoo's captive elephants, including Billy. On such occasions, including during Sept. 2018, City and Zoo personnel, including L.A.P.D. officers, have attempted to interfere with and actually interfered with my clients' clearly established rights to demonstrate and petition at the L.A. Zoo. These personnel annoy, pester, and harass my clients such as by giving them wrongful legal advice, threatening them with arrest, and threatening to seize personal property, particularly megaphones, despite my clients' lawful conduct.

I demand that you and your personnel immediately and permanently cease and desist from annoying, pestering, harassing, or in any way interfering with my clients' rights to demonstrate and petition, including but not limited to their right to use amplified sound.

My clients intend to engage in expressive activity upon the entire Los Angeles Zoo & Botanical Gardens property *that is open to the general public* including interior sidewalks around the pavilion and the parking lot in October 2018 and future dates. As always, they will not violate any laws. My clients will remain peaceful at all times and will not enter any ticket/admission-restricted areas, nor will they obstruct or interfere with the operations of the facility. My clients intend only to express their political, social, ethical, economic, and, for some, religious views about the moral duties and relationships between humans and nonhumans as these duties and relationships relate to captive nonhuman animals such as those imprisoned at the Zoo.

The areas open to the general public at the Zoo are a traditional public forum. Restricting my clients' use of these areas violates the California Constitution (Art. I, Sec. 2-3) and the Tom Bane Act (Civil Code § 51.7) along with parallel First Amendment rights to assembly, petition, and free speech. Your

personnel who violate my clients' rights are inviting a lawsuit for themselves and for the City. Any arrests and threats of arrest are threats of violence prohibited by the Ralph Act (Civil Code § 52) that sets a civil penalty at $25,000 per incident. Qualified immunity will not be available to your personnel under 42 U.S.C. § 1983 given the long history of free speech violations at the L.A. Zoo—In June 2003, I was involved with Steve Levy's lawsuit against the L.A. Park Rangers after the rangers falsely arrested Mr. Levy and fractured his wrist while he attempted to lawfully petition at the Zoo, resulting in an undisclosed settlement. Qualified immunity is not available for violations of the Tom Bane and Ralph Acts. This Cease and Desist Letter will be used as evidence of notice of the current state of the law if any government actors attempt to claim immunity from suit. Attorney fees through Tom Bane and Ralph Acts and 42 U.S.C. § 1988 will be sizeable and vigorously pursued.

Venues that are open to the public—whether private or public—that operate on traditional public fora are protected by the California Constitution and First Amendment. Any claim of commercial use of the property is irrelevant. *Fashion Valley Mall, LLC v. NLRB* (Cal. 2007) 172 P.3d 742, 745. Walkways are a classic public forum where the First Amendment guarantees the right of free speech. *Frisby v. Schultz* (1988) 487 U.S. 474, 480 ("'[T]ime out of mind' … sidewalks have been used for public assembly and debate, the hallmarks of a traditional public forum.") This is true even of sidewalks located on property as to which the proprietor claims the right to ban expressive activity. *See, e.g., Marsh v. State of Ala.* (1946) 326 U.S. 501, 507-08 (sidewalk on private property held to be a public forum); *A.C.L.U. of Nevada v. City of Las Vegas* (9th Cir. 2006) 466 F.3d 784, 791 (sidewalk at redesigned "Fremont Street Experience" held to be a public forum despite city's assertions to contrary); *Venetian Casino Resort, L.L.C. v. Local Joint Executive Bd. of Las Vegas* (9th Cir. 2001) 257 F.3d 937, 943-44 (sidewalk on casino property held to be a public forum). Accordingly, any fence or wall around the Zoo does not change its public forum character.

My clients intend to use amplified sound in conformance with L.A. Municipal Code § 115 that includes, "the operation or use of sound amplifying equipment for noncommercial purposes is prohibited between the hours of 10:00 p.m. and 7:00 a.m. of the following day." *Id.* subs. (d). Political free speech is noncommercial. I urge that your personnel be informed that demonstrators and petitioners who use amplified sound at the L.A. Zoo between 7:00 a.m. and 10:00 p.m. are not violating your laws. *Any threats by your personnel relating to my clients' use of amplified sound will form the basis of a lawsuit.*

Cordoning my clients off and away from Zoo patrons ensures that my clients will be unable to hand a leaflet to or even converse with the great majority of Zoo patrons. This practice of relegating free speakers to a restricted area not only defeats their ability to communicate their message, but it marginalizes them in a way that actually detracts from their message. *See, e.g., Kuba v. 1-A Agr. Ass'n* (9th Cir. 2004) 387 F.3d 850, 863 ("Cordoning protestors off in a free expression zone … located over 200 feet from the entrance, far from encouraging interaction with them, is more likely to give the impression to passersby that these are people to be avoided.")

Moreover, the Zoo's practice of treating free speakers differently from other members of the public violates the Equal Protection Clauses of the California Constitution and Fourteenth Amendment. As the public is allowed on the property's interior walkways without the necessity of purchasing a ticket, the Zoo's exclusion of free speakers from those same public walkways constitutes unlawful disparate treatment. Additionally, the Zoo allows its interior sidewalks to be used from time to time for voting, tabling, soliciting and/or other protected speech activities. The fact that it allows certain

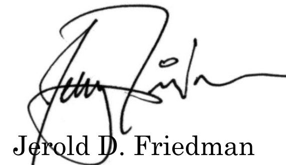
persons to engage in such activities, but prohibits others, is further evidence of unlawful disparate treatment. *Police Dept. of City of Chicago v. Mosley* (1972) 408 U.S. 92, 96 ("Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say.")

The Zoo cannot argue that it must ban access to interior spaces for reasons of public safety, pedestrian traffic flow, and similar issues. Such argument is meaningless without actual evidence that free speakers are actually likely to cause disruption or safety issues. *See, e.g., Kuba v. 1-A Agr. Ass'n* (9th Cir. 2004) 387 F.3d 850, 859 (striking down venue's free speech designated areas because the venue "failed to meet its burden of proving that demonstrators handing out leaflets and carrying signs on the parking lots and walkways outside the Cow Palace would cause the congestion and danger to safety [it] alleges."); *Bay Area Peace Navy v. U.S.* (9th Cir. 1990) 914 F.2d 1224, 1228 (government "is not free to foreclose expressive activity in public areas on mere speculation about danger."); *Weinberg v. City of Chicago* (7th Cir. 2002) 310 F.3d 1029, 1039 (striking down an ordinance restricting speech because the city "provided no objective evidence that traffic flow on the sidewalk or street is disrupted" by expressive activity).

As to any belief that the Zoo personnel or patrons may dislike my clients' message, that has no bearing on their right to express it. It is settled law that a venue may not prohibit speech because it's considered offensive or bad for business. "[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." *Terminiello v. City of Chicago* (1949) 337 U.S. 1, 4. *See also Bolger v. Youngs Drug Products Corp.* (1983) 463 U.S. 60, 71 ("the fact that protected speech may be offensive to some does not justify its suppression.").

Accordingly, there is no legal or factual basis for the Zoo, their partners or agents, to interfere with free speakers from any area open to the public or to prevent the use of amplified sound. Again, I demand that you cease and desist, and instruct City and Zoo personnel and their agents to cease and desist from interfering with free speakers, requiring them to remain distant from Zoo patrons, or from barring their use of amplified sound during the Zoo's business hours.

Regards,



Jerold D. Friedman
First Amendment Attorney
lawoffice.jdf@gmail.com