



May 14, 2020

County of Santa Clara  
Public Health Department  
c/o Sara H. Cody, M.D., Health Officer  
976 Lenzen Avenue, 2nd Floor  
San Jose, CA 95126

Dear Santa Clara County Officials,

Pacific Legal Foundation (PLF) is writing to ask that you rescind your ban on car parades, caravans, and drive-through graduations. This prohibition on an entirely innocuous—and constitutionally protected—activity not only takes away an important source of morale during a difficult time, it also presents serious First Amendment concerns.

Some of the most important moments in people’s lives, from weddings, to baby showers, to artistic performances, to high school graduations, have been cancelled in light of the pandemic. Even though in-person gatherings have understandably been placed on hold, entrepreneurial and resilient Americans have found a new, safe way to celebrate loved ones and to otherwise spread joy: car parades. To take one example, law enforcement officials recently joined a caravan<sup>1</sup> celebrating the 100th birthday<sup>2</sup> of the real life Rosie the Riveter.

These parades represent the best in humanity: people finding a way to gather without putting anyone at risk. In Phoenix, Arizona, the women of “Ladies in the Headlights” have taken to drive-in comedic performance art<sup>3</sup> to entertain stir-crazy neighbors, who can view the show from their cars. In many states, people are worshipping from their cars on Sundays.

Drive-through graduations are yet another form of these car-based celebrations and they’ve provided a means for students to commemorate an important achievement. Graduates are permitted to walk across an empty stage while family members watch

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<sup>1</sup> <https://www.mercurynews.com/2020/05/06/drive-through-graduations-celebrations-forbidden-in-santa-clara-county/>

<sup>2</sup> <https://www.mercurynews.com/2020/04/20/san-jose-rosie-the-riveter-gets-a-parade-for-100th-birthday/>

<sup>3</sup> [https://ashleynaftule.substack.com/p/dance-party-by-the-dashboard-lights?fbclid=IwAR3MT0I8\\_yYlt2BypPBCom66zoqY0d0Hy5lyRDpwlVZUH8MJQMEwrJ2HXRk](https://ashleynaftule.substack.com/p/dance-party-by-the-dashboard-lights?fbclid=IwAR3MT0I8_yYlt2BypPBCom66zoqY0d0Hy5lyRDpwlVZUH8MJQMEwrJ2HXRk)

and take photos from their vehicles. Yet Santa Clara County recently directed residents to cease<sup>4</sup> these and similar festivities.

Peaceable assemblies, like caravans, are protected by the First Amendment and “cannot be made a crime.” *See De Jonge v. Oregon*, 299 U.S. 353, 365 (1937). Because assembly is closely tied to the free exchange of ideas, free speech, freedom of conscience, and freedom of association, it’s considered a fundamental right. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 639 (1943); *Thomas v. Collins*, 323 U.S. 516, 530 (1945). Notably, Santa Clara’s ban is broad enough to encompass not just celebrations, but also artistic performances, protests, and other First Amendment activities.

Because such assemblies are fundamental, “any attempt to restrict [them] must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger.” *Collins*, 323 U.S. at 530. Only the “gravest abuses, endangering paramount interests, give occasion for permissible limitation.” *Id.* Unsupported speculation that some harm will occur, like the conjecture that people may fail to observe social distancing guidelines, or the mere belief that such parades are “annoying,” do not satisfy this scrutiny. *See Coates v. City of Cincinnati*, 402 U.S. 611, 615 (1971).

It plainly makes no sense for the County to ban these peaceful assemblies. These celebrations do not present a public safety threat; attendees *stay in their cars*. And curiously, the County has not banned plenty of “drive up” or “drive through” economic activity, adding to the policy’s irrationality. In fact, the County has started allowing “lower risk” businesses to resume some operations, including curbside purchases.

Such over- and under-inclusiveness recently led a federal judge in Kentucky to enjoin a local order prohibiting drive through church service. The court noted that the order was under-inclusive because it didn’t prohibit “a host of . . . equally harmless” activities, and it was over-inclusive because the City’s fears of “spreading COVID-19” could be achieved by allowing attendees to stay in their cars. *See On Fire Christian Center, Inc. v. Fischer*, 2020 WL 1820249, at \*7 (W.D. Ky. Apr. 11, 2020). The court concluded that even during a pandemic, “constitutional rights still exist.” Absent any compelling explanation for the law’s inconsistencies, Kentuckians retained their First Amendment right to assemble for church service, “car fender to car fender.”

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<sup>4</sup> <https://www.sccgov.org/sites/covid19/Pages/public-health-orders.aspx#faq>

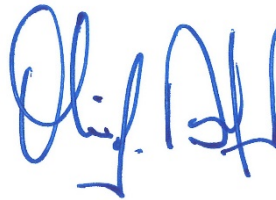
As County police officers have stated to the media, the ban on car parades presents an enforcement nightmare. It takes police resources away from preventing actual threats to public safety and forces officers to interact, face to face, to issue citations or fines. At a time of record unemployment and mandatory social-distancing, the County should endeavor to avoid fining people for petty violations, rather than doubling down on them.

The County can adequately protect public safety without unnecessarily depriving people of their constitutional rights to associate, to celebrate or to express joy, and to otherwise pursue happiness. PLF respectfully asks that the County reverse course on car parades.

Sincerely,



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Pacific Legal Foundation is the nation's most prolific public interest law firm devoted to advancing individual rights and limited government. PLF's public-policy and litigation expertise includes protecting people's ability to earn a living, fighting irrational and disparate government treatment, and protecting freedom of expression.