



CLDC

1430 Willamette St. #359
Eugene, OR 97401
Phone: 541-687-9180 Fax: 541.804.7391
E-Mail: info@cldc.org
Web: www.cldc.org

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Mayor Lucy Vinis
City Manager Sarah Medary, Pro Tem
Eugene Police Chief Chris Skinner
Interim Fire Chief Chris Heppel
Oregon State Police Superintendent Travis Hampton
Governor Kate Brown and Staff
Oregon National Guard Major General Michael E. Stencel
Sent by Email Attachment to lvinis@eugene-or.gov;
smedary@eugene-or.gov; policechief@ci.eugene.or.us;
firedept@ci.eugene.or.us; travis.hampton@osp.oregon.gov;
orgov@hcrm.iconstituent.com; nik.blosser@oregon.gov;
constantin.severe@oregon.gov; agdd@mil.state.or.us;
tagor@mil.state.or.us

RE: City of Eugene Response to Recent Protests

To City of Eugene and State of Oregon Officials:

Over the course of the last week, the people of Eugene have joined millions of others across the U.S. to demand, at the very least, an end to the routine extrajudicial executions of black, brown, and indigenous people by the police. The actions of the City of Eugene, including law enforcement, in response to the protests are a draconian affront to the dignity of a righteously angered population. While the City has enjoyed the reputation of a “liberal” bastion of sorts, the past week has shown that even Eugene is not immune from the creep of the authoritarian norms emanating from D.C. The response of the City and, particularly, local law enforcement to the recent protests has made it abundantly clear—as many protestors have claimed—that the institutions governing our daily lives have failed to meet their most fundamental obligations to protect and serve the population.

The systemic violence endured by black, brown, indigenous, and, more generally, working-class people has reached a level that can no longer be endured. Likewise, we can no longer endure the failure of government to take adequate action on issues like racial justice, criminal justice, gender equality, healthcare, climate change, wealth inequality, and debt. These issues are interrelated and require immediate action. There is simply no viable future for most people under the current arrangement of power—and people recognize that.

In many respects, the restraint of the protestors regarding these intolerable conditions should be commended. They have demonstrated and asked “nicely” for decades. They have voted. They have taken a knee. They have signed petitions. They have begged for justice and a future worth fighting for. But, despite the decades of tireless activism, the demands for a life with dignity have been ignored. Instead, police budgets balloon while unhoused people are arrested for sleeping in public.

On May 29, several buildings were damaged and a few dumpsters set on fire near 7th and Washington in Eugene. In response, Eugene City Manager pro tem Sarah Medary instituted curfew orders from May 30 through June 2, despite the fact that protests after May 29 were calm. In response to these protests, the Eugene police department turned Eugene neighborhoods into near-warzones, terrorizing residents from armored vehicles, gassing residents on sidewalks, harassing and detaining passersby, and shooting projectiles at residential housing.

The Civil Liberties Defense Center, our members and supporting organizations, hereby demand the following:

- An immediate end to the use of CS/CN gas and other chemical weapons, which are outlawed by international law in military wars, and are highly dangerous (as discussed below), but are used against the people of Eugene.
- An immediate end to the use of projectiles such as rubber bullets, bean bags, and flash-bangs against the people of Eugene.
- Confiscation of all military surplus equipment currently in possession of the Eugene Police Department, including all equipment obtained by the EPD through the federal 1033 Program/National Defense Authorization Act. Such equipment, if eligible for sale, shall be sold and the proceeds derived from the sale shall be distributed to programs or groups that are primarily engaged in promoting racial justice. If no items are eligible for sale, they shall be destroyed. No further requisition of military equipment by local law enforcement should be sought or procured.
- Confiscation of all firearms in possession of the Eugene Police Department, including any arms that facilitate the deployment of CS/CN gas. Firearms, if eligible for sale, shall be sold and the proceeds derived from the sale shall be distributed to programs or groups that are primarily engaged in promoting racial justice. If no items are eligible for sale, they shall be destroyed. No further funding for police weaponry should be authorized or permitted. Police in Eugene and across the country have failed to demonstrate that they can competently handle firearms.
- Confiscation of all ammunition, including live rounds, CS/CN cannisters, rubber bullets, bean bags, and flash bangs. Ammunition that is eligible for sale, shall be sold and the proceeds derived from the sale shall be distributed to programs or groups that are primarily engaged in promoting racial justice. If no items are eligible for sale, such items shall be destroyed. No further funding for police ammunition and “less lethal” projectiles should be authorized or permitted.
- Immediate firing and prosecution of all EPD officers involved in the incidents described below.
- An immediate moratorium on the use of “emergency” curfew orders.
 - In the alternative, we demand explicit permission from the City to permit volunteer medical workers, National Lawyers Guild Legal Observers, Eugene Jail Support members, and media personnel to be present within the curfew zones.

- Immediately drop all charges against all protestors.
- Amend Eugene Code 2.013 and 2.240 to require at least one half of the civilian review board to consist of individuals elected by the people of Eugene and expand the Board's power to provide meaningful accountability beyond mandating a new investigation or making "recommendations."
- Prohibit the City from engaging in bargaining over police discipline in all future contract negotiations with the Eugene Police Employees Association and any other law enforcement unions.¹

Turning to the curfew orders in particular, they are not authorized by state statutory law nor are they consistent with the United States Constitution, including the Constitution's prohibition on restrictions of speech and assembly, its protection for the freedom of movement, and its most basic notice requirements. They are also inconsistent with Article I, section 8, of the Oregon Constitution.

The conduct of protestors over the last week does not justify a state of curfew over vast sections of the City that effectively places thousands of people under house arrest for eight or more hours every evening and morning. The Constitution does not allow the City to order such a sweeping restriction on free speech and travel across a city of over 170,000 people to address a few localized property crimes.

The CLDC has been coordinating the legal observers (trained by us under standards promulgated by the National Lawyers Guild) who have been on the ground at the demonstrations throughout Eugene during the last week. Especially since these demonstrations are in response to police brutality and misconduct, it is imperative that legal observers are allowed to monitor and document police actions and misconduct during these events. And given the unprecedented use of force deployed against community members, it is essential that these crimes and constitutional violations are documented by trained volunteers in order to uphold the rights of victims with respect to future federal civil rights lawsuits and criminal defense cases.

The CLDC has also been working in coordination with the Eugene Jail Support group that has been assisting demonstrators and community members who are targeted by police, arrested, or simply present in curfew zones as armed police terrorize the streets. Similar to legal observers, they are easily identifiable.

In addition, the CLDC has been a resource in recent days for community members who have witnessed law enforcement on the streets engaged in arbitrary and excessive uses of force against individuals and crowds of people who were not engaged in criminal conduct or civil disorder. We are concerned for the safety of demonstrators and other members of the community.

In the event the City Manager pro tem insists on additional curfew orders, we demand an exemption for volunteer medical personnel, media, jail support volunteers, legal observers, and legal workers. The City must provide explicit direction to law enforcement to refrain from attacking, harassing, or otherwise interfering with members of the aforementioned groups that are known to law enforcement or whose

¹ See Professor Stephen Rushin's analysis in *Police Union Contracts*, 66 Duke L.J. 6 (2017), for a statistical discussion on how "police departments' internal disciplinary procedures, often established through the collective bargaining process, can serve as barriers to officer accountability." <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3890&context=dlj>

status is immediately apparent (*i.e.*, attire clearly indicating that a person is a part of one of these groups, or whose presence is made known to law enforcement).

As explained below, by sweeping in volunteer medical personnel, trained legal observers, jail support, and media personnel, the curfew orders that have been issued in the past few days are inconsistent with the United States Constitution, including the Constitution's prohibition on restrictions of speech and assembly, its protection for the freedom of movement, and notice requirements.

Given those concerns, we write to you here regarding the safety and constitutionally-protected role of medical workers, legal observers, jail support, and media. It is imperative that those in charge ensure that such people are not detained, arrested, harassed, or harmed for alleged violations of curfews or any other civil emergency declarations.

The First Amendment to the U.S. Constitution and Article I, section 8, of the Oregon Constitution protect the right of the people to observe the police, especially during political situations such as protests against governmental actions and systemic issues in our society. And in particular, when people come out into the streets to express their objection to police violence and racism, there is a heightened need for medical personnel, media, lawyers, legal workers, and trained legal observers to be present.

The right to observe the actions of the police in such situations without fear of retaliation and physical violence helps to distinguish a democracy from a fascist police state. That is even more true when thousands, and tens of thousands, of people are pouring out into the public arena to express their anger, fears, and concerns.

The need for legal observers to be present and observe these protests is similar to the need for the press to be present and report these events. The recent curfew orders have exempted members of the press, though that has not stopped EPD personnel from viciously attacking members of the media.² Legal observers should similarly be allowed to be present and observing within zones that have been closed to the general public under "emergency" curfews.

Likewise, the need for volunteer medical personnel in the midst of CN/CS gas and an onslaught of less-than-lethal projectiles is obvious—particularly during a pandemic that primarily impacts the respiratory system. Impeding medical personnel from providing emergency medical assistance to people injured by police actions (especially those experiencing respiratory issues in the middle of pandemic) is a clear and direct violation of the medical neutrality standards of the Geneva Convention.

We are also writing to notify you of reports we have been gathering regarding the apparent random firing of rounds (both rubber bullets and tear gas/pepper spray) at people and residences without reasonable suspicion (much less probable cause) of criminal activity or any threat to militarized police. We have reports of people in their homes having to evacuate their bedrooms due to gas/pepper spray fired at their windows; a door of a residence being knocked off its hinges by rubber bullets; reporters being physically targeted; pepper spray/gas and rubber bullets fired at people heading home (and thus not subject to the curfew); similar assaults of people who were not made aware of the late-night

² <https://www.youtube.com/watch?v=O9VaCnnUeHI>

expansion of the curfew; and a resident sitting on his porch being hit with a rubber bullet. An alleged violation of this questionable curfew should never warrant the use of force the community has been subjected to.

The lack of notice regarding the curfew orders is particularly troubling. On June 1 the City sent messages, via its emergency alert system, about 30 minutes before a curfew was set to take effect. Those who received the message barely had time to clear the area under curfew. Just after 11:00 pm that night, a second emergency alert was sent notifying residents (those able to receive emergency alerts on their phones) that the *entire* City was under curfew from midnight to 6:00AM. No such alert was sent on May 31 (the night when most of the above-referenced government assaults occurred), and both nights many were unaware of any of these curfew orders and, as a result of the City's failure to provide adequate notice, were subject to unlawful and extreme uses of force by the EPD.

The horrific and potentially lethal effect of rubber bullets has long been studied and known. See https://phr.org/wp-content/uploads/2020/06/PHR_INCL0_Fact_Sheet_Kinetic_Impact_Projectiles.pdf

Similarly, spraying pepper gas on crowds and towards residential windows is unreasonably dangerous, especially during a pandemic, and especially for vulnerable populations such as the ill, the elderly, and young children. See <http://www.nyc.gov/html/ccrb/downloads/pdf/pepper2000.pdf> and https://phr.org/wp-content/uploads/2020/06/PHR_INCL0_Fact_Sheets_Chemical_Irritants.pdf <https://www.nbc4i.com/news/local-news/city-of-columbus-looking-into-osu-grads-death-after-she-was-reportedly-sprayed-with-tear-gas-at-a-protest/>

The City of Eugene must cease and desist with the enactment, implementation, and enforcement of unconstitutional and unnecessary preemptive curfews within our community. We accordingly expect that the Eugene Police Department and all other agencies working in collaboration with them at protests --- including the Eugene Fire Department, Oregon State Police, and National Guard --- will respect the important and fundamental constitutional rights and must cease and desist from unlawful and unconstitutional excessive force.

Sincerely,

Lauren Regan, Executive Director and Senior Staff Attorney
Marianne Dugan, Senior Staff Attorney
Cooper Brinson, Staff Attorney