

# Daily Journal

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PERSPECTIVE

## Locked down or locked up? Demystifying COVID-19 health order enforcement

By **Richard Kaplan**  
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Since the pandemic's onset, state and local agencies have sought to address the acute public safety threat through the promulgation of public health ordinances focused on promoting social distancing and reducing transmission. L.A. County's Safer at Home Order and the more recent Safer L.A. Order aim to achieve these goals through a combination of ordering residents to remain in their homes and regulating, if not shutting down completely, the operations of commercial business.

However, implementation of these ordinances has been accompanied by questions of how they will be enforced. While the county's stay-at-home orders offer mechanisms to facilitate compliance, including authorizing the Department of Water and Power to shut off utility service and encouraging the city attorney to file misdemeanor charges to address noncompliance, significant questions remain.

While the orders clearly state that noncompliance shall constitute a misdemeanor subject to fines and imprisonment, other

language is relatively permissive. The Safer L.A. Order states "individuals, businesses, and properties which fail to comply with this order *may* be subject to having their utility services shut off by the Department of Water and Power." Further, the LAPD and city attorney are simply *urged* to enforce the order using the Los Angeles Administrative Code.

Charges filed by the city attorney suggest that enforcement of local health ordinances is focused on the most egregious offenders. In August 2020, for example, the office filed a misdemeanor complaint against TikTok stars Bryce Hall and Blake Gray alleging they violated the Los Angeles Administrative Code and Los Angeles Municipal Code by hosting large private parties in defiance of the emergency declaration.

The charges did not come without warning. In response to a party hosted on Aug. 8, 2020, at a home shared by Gray and Hall in the Hollywood Hills, officers issued Hall a citation and posted an initial warning of noncompliance. On Aug. 14, LAPD responded to another party hosted by Hall and Gray attended by hundreds.

Gray was cited, and officers posted an updated party house citation and a final notice of noncompliance with the Safer L.A. order.

Five days later, Mayor Eric Garcetti ordered the power cut at the residence, and the city filed misdemeanor charges. Hall and Gray have each pled not guilty and are set for pre-trial later this month.

The city has also filed criminal charges against property owners who repeatedly disregard warnings and citations issued over parties hosted at their properties. Notably absent from these filings are the Safer L.A. Order violations that were levied against Hall and Gray. Regardless, the city has clearly indicated that it is willing and able to take enforcement action against individuals who flout public health orders and facilitate unlawful gatherings.

Those charged with violations who are willing to take responsibility for their disobedience may be able to minimize punishment through diversion. Because the mayor's health orders authorize violations to be charged as misdemeanors, those facing charges likely qualify for court-ordered diversion. Judges possess the

authority to offer diversion in misdemeanor cases over the objection of prosecuting attorneys. If the defendant completes all conditions imposed by the court, which will undoubtedly include a prohibition of the conduct which led to the original charges, the misdemeanor charges will be dismissed.

Action taken against local businesses found to be in violation likewise depends on the owner's willingness to acquiesce to enforcement. Businesses that plead *nolo contendere* to violations have received fines as low as \$25, and many businesses charged have seen their cases dismissed.

However, cases for those pleading not guilty remain pending. In the most egregious cases, violators have been hit with civil charges over their refusal to discontinue in-person dining. Burbank's Tinhorn Flats and Agoura Hill's Cronies, for example, were both named in lawsuits alleging violations of emergency health orders.

We have yet to see if anyone will choose to fight these charges. A roadmap to their defense can be found by examining some of the civil lawsuits filed by restaurants and religious groups against

government entities promulgating and enforcing COVID restrictions. Challenges have found some success within the context of the free exercise clause of the First Amendment.

In *Roman Catholic Diocese v. Cuomo*, 141 S. Ct. 63 (2020) and *South Bay United Pentecostal Church v. Newsom*, 592 U.S. (2021), the U.S. Supreme Court granted injunctive relief to churches seeking to prevent states from enforcing health-related bans on indoor religious gatherings. These decisions were predicated on violations of the free exercise clause, creating a narrow avenue of recourse for individuals seeking reprieve from government-issued COVID restrictions. However, the orders granting such relief will terminate automatically

if the church's respective petitions for writ of certiorari are denied.

In November 2020, on the other hand, the California Restaurant Association filed suit seeking to enjoin the county from enforcing its ban arguing officials failed to conduct an appropriate risk-benefit analysis on the perils of outdoor dining. The court sided with the restaurants and issued an order enjoining the county from enforcement.

Upon review, the California Court of Appeal directed the superior court to vacate its order, reasoning even in the absence of specific findings on outdoor dining, the outdoor dining ban was rationally related to a legitimate state interest. *County of Los Angeles Department of Public Health v. Superior Court (Cal-*

*ifornia Restaurant Association)*, 2021 DJDAR 1969.

COVID violations will likely continue to be handled on a case-by-case basis and their resolution will depend on the level of accountability that violators are willing to

accept. While actions taken by the city and county indicate a desire to resolve these transgressions through warnings and minimal fines, wanton defiance of protocols will not be met with such forbearance. ■

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