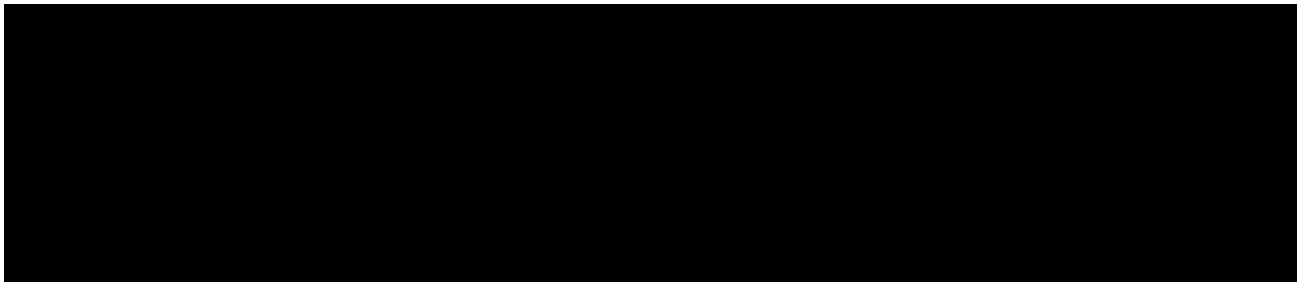


March 6, 2025

Los Angeles Department of Beaches and Harbors
c/o Carol Baker, Division Chief - Community & Marketing Services
13837 Fiji Way
Marina Del Rey, CA 90292
cbaker@bh.lacounty.gov

RE: Los Angeles County's Unlawful Restrictions on the Use of Public Beaches

Dear Carol Baker:

The American Center for Law and Justice (ACLJ)[1] represents Church on the Beach and its co-pastors, Jason Flentye, Ron Chan, and Ritch Hansen, regarding the new policy of Los Angeles County ("LA County") that singles out religious groups for disparate treatment.

As explained in more detail below, it is unlawful for a public entity to treat religious groups differently or less favorably than non-religious groups with regard to the access of public forums. Accordingly, we demand that LA County immediately cease from discriminating against Church on the Beach for its religious activity, and instead immediately agree to allow the church to continue meeting pursuant to generally applicable LA County policy. A statement of facts and applicable law are provided below.

[1] By way of introduction, the ACLJ is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion. *See, e.g., Pleasant Grove v. Summum*, 555 U.S. 460 (2009) (holding that the government is not required to accept counter-monuments when it displays a war memorial or Ten Commandments monument); *McConnell v. FEC*, 540 U.S. 93 (2003) (holding that minors have First Amendment rights); *Lamb's Chapel v. Center Moriches Sch. Dist*., 508 U.S. 384 (1993) (holding that denying a church access to public school premises to show a film series violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987) (striking down an airport's ban on First Amendment activities).

STATEMENT OF FACTS

King's Harbor Church has conducted services on Redondo Beach in Los Angeles County, with a permit from the county to do so, for eighteen years. Their service was called Church on the Beach. In 2012, King's Harbor Church began meeting there year-round. Recently, it decided to create Church on the Beach as a separate entity from King's Harbor Church. Church on the Beach became a 501(c)(3) in July and, by September, it has become officially a separate entity, although still meeting with the support and assistance of King's Harbor Church. Pastor Jason Flentye was a pastor of the King's Harbor Church and is now a co-pastor of Church on the Beach. Church on the Beach still meets under the auspices of King's Harbor Church.

Approximately 120 people attend Church on the Beach every Sunday. The church meets just off a walking path and is careful not to block anything with any of its activities. No traffic is obstructed by the church's gathering. The church leaves room in front and behind of the group and is careful to leave lanes clear for maintenance trucks, emergency vehicles, and the like to pass by. The church meets on the beach from 8am to 11am. No one from the church solicits in any way to the public; instead, they only give their materials to the specific people who come to attend their services. Whenever there are large events at the beach where the church's presence might arguably cause any possible disruption, like a 10k for the Superbowl or a large swimming event, the church relocates to respect that high impact and to ensure that its services do not have any adverse impact on the community. Church on the Beach is committed to not causing any disruption in the community.

After Church on the Beach's status as an independent entity was formalized, Pastor Flentye contacted your office to start the new permit process for next year. When he did so, he was informed that at the end of October, the County had implemented a new policy for religious services for next year, deciding that LA County Department of Beaches and Harbors will no longer issue yearly permits. He was told that the new, final policy of the County is that,

> [d]ue to impacted use of County-owned and operated beaches, the Department's executives have implemented a policy limiting groups with grandfathered status to (6) religious activities per year with the following stipulations: (2) religious activities are allowed waived permit fees ($250) at any location, and the remaining (4) religious activities require fees and are only permitted at specific locations (Dockweiler, Mothers Beach, Will Rogers T5).

Over the phone, he was told by an individual in your office that the County views churches as not needing the beach, because churches can meet in a building. Pastor Flentye explained that meeting on the beach is very important to Church on the Beach, as people attend who have had difficult or negative experiences in church buildings and therefore Church on the Beach is a crucial outlet for their religious expression, activity, and speech, that could not be fulfilled at an indoor religious location.

Our client then spoke with another individual in your office. She said that since their current permit is for King's Harbor Church, Church on the Beach technically cannot meet at all, even during the rest of this year. He explained that it was still all the same people, and King's Harbor

Church agreed for their insurance to still apply, so eventually after a few more calls, your office agreed for them to keep meeting through the rest of the year, with King's Harbor Church still liable for insurance purposes.

King's Harbor Church has recently been issued a six-month extension. Likewise, Church on the Beach may continue to meet under the newly extended permit, so long as King's Harbor Church continues to carry the liability insurance and accepts full responsibility, which it will, and that extension will apply to Church on the Beach.

STATEMENT OF LAW

LA County's stated aim is to balance the coastal access needs of all religious institutions with the needs of those engaging in beach-dependent recreational and leisure activities. But what it cannot do is seek to achieve that aim by expressly discriminating against religious groups in public spaces.

As the Supreme Court has explained,

> It is an elementary rule that the government may not exclude speech on the basis of its content from either a traditional public forum or a forum created by government designation, unless the exclusion is necessary to serve a compelling state interest which cannot be served by a less restrictive action.

Cornelius v. NAACP Legal Defense & Educ. Fund, 473 U.S. 788, 803 (1985); *see also Widmar v. Vincent*, 454 U.S. 263, 270 (1981) (holding a university policy denying a religious student club access to its facilities on equal terms violated the First Amendment); *Lamb's Chapel v. Center Moriches Sch. Dist*., 508 U.S. 384 (1993) (holding that denying a church access to public school premises to show a film series violated the First Amendment).

In *Widmar,* the Supreme Court explained that discrimination towards religion in a public forum constitutes forbidden content-based discrimination. *Widmar,* 454 U.S. at 269-70. A public university "discriminated against student groups and speakers based on their desire to use a generally open forum to engage in religious worship and discussion." *Id.* at 269. Because this restriction in a public forum was "based on the religious content of a group's intended speech," the university was held to the high standard of needing to show that the regulation was "necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Id.* at 270. It failed to meet this standard; "we are unable to recognize the State's interest as sufficiently 'compelling' to justify content-based discrimination against respondents' religious speech." *Id.* at 276. In short, a content-based restriction on the use of a public forum, like the specific religious policy you have articulated, is subject to the highest scrutiny; the First Amendment requires religious groups to be treated equally with other groups that use public facilities.

Likewise, in *Lamb's Chapel*, the Supreme Court held that a school district violated the Free Speech Clause when it excluded a private group from presenting films at the school based solely on the films' discussions of family values from a religious viewpoint. *Lamb's Chapel*, 508 U.S. at

393. Even though the government can justify some reasonable restrictions on the forums it creates, it cannot justify allowing all views of an issue "except those dealing with the subject matter from a religious standpoint." *Id.* This reflects the basic principle "that the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others." *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984). Even when a government creates a limited forum, it has "the power to permit or exclude certain subject matters," but it does *not* have the power "to deny use for any religious purpose." *Lamb's Chapel*, 508 U.S. at 396.

The beach in question here is a public forum. It is a type of park, open to the public for general use and used regularly by the public for all manner of activities. A park is open to the public for general use as a public forum, and it is a principal of black letter law that it is a "traditional public forum for speeches and other transitory expressive acts." *Pleasant Grove City v. Summum*, 555 U.S. 460, 464 (2009). In fact, "streets and parks which have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. In these quintessential public forums, the government may not prohibit all communicative activity." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 38 (1983).

It is very well-established that parks are public forums and that government regulations that govern their use are held to a high legal standard. The Supreme Court has

> condemned statutes and ordinances which required that permits be obtained from local officials as a prerequisite to the use of public places, on the grounds that a license requirement constituted a prior restraint on freedom of speech, press and religion, and, in the absence of narrowly drawn, reasonable and definite standards for the officials to follow, must be invalid.

Niemotko v. Maryland, 340 U.S. 268, 271 (1951).

A public beach, open to the public for general use as a park, is a public forum. For a restriction in a public forum to be permissible as a time, place, manner restriction, the courts require "[1] that they are justified without reference to the content of the regulated speech, [2] that they are narrowly tailored to serve a significant governmental interest, and [3] that they leave open ample alternative channels for communication of the information." *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1023 (9th Cir. 2009) (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984)). LA County's policy, on its face, is based on the content of speech, discriminating against religious speech. It therefore cannot meet this standard.

But regardless, even if a beach could be argued to be a nonpublic forum, discrimination against religion is still forbidden by the Constitution. In particular, even in a nonpublic forum "restrictions on access must be '(1) reasonable in light of the purpose served by the forum and (2) viewpoint neutral.'" *Kaahumanu v. Hawaii*, 682 F.3d 789, 806 (9th Cir. 2012) (quoting *Ctr. for*

Bio-Ethical Reform, Inc. v. City & County of Honolulu, 455 F.3d 910, 920 (9th Cir. 2006)). Under this standard, the policy likewise fails; the policy is on its face not viewpoint neutral but discriminates against gatherings with a religious viewpoint. *See Id*. (quoting *Child Evangelism Fellowship of Md., Inc. v. Montgomery Cnty. Pub. Schs.*, 457 F.3d 376, 384 (4th Cir. 2006)) ("[V]iewpoint neutrality requires not just that a government refrain from explicit viewpoint discrimination, but also that it provide adequate safeguards to protect against the improper exclusion of viewpoints."); *Southworth v. Bd. of Regents of Univ. of Wisc. Sys.*, 307 F.3d 566, 579 (7th Cir. 2002) ("[W]e conclude that the prohibition against unbridled discretion is a component of the viewpoint-neutrality requirement.")).

In short, this matter is straightforward. Under *Lamb's Chapel* and *Kaahumanu v. Hawaii*, it violates the First Amendment to enact different rules for religious gatherings on public beaches than those applicable to other gatherings.

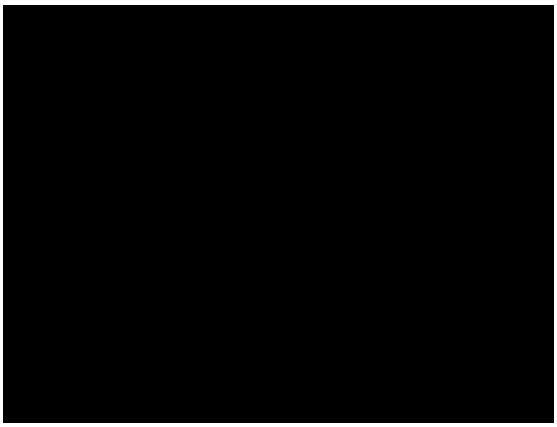
CONCLUSION AND DEMAND

To ban or limit groups from using a public beach solely because they involve religious content or speech – or because the County thinks a church is less entitled to public forum access because it could be meeting in a building instead – is unconstitutional. Church on the Beach has already suffered irreparably injury, and the injury is ongoing until you immediately correct the unconstitutional policy. *See Elrod v. Burns*, 427 U.S. 347, 373-74 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

To resolve this matter efficiently and avoid further legal action, we respectfully insist that this policy be immediately ended and that churches be free to use the beach under the same generally applicable rules applicable to nonreligious gatherings. Should we not receive these assurances **by March 20, 2024**, we will pursue appropriate legal remedies. We reiterate that our goal is to settle this matter without the need for litigation, and we are optimistic such a path exists. We look forward to your response. Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

[redacted]



** Admitted to practice law in Virginia*
*** Admitted to practice law in California, Tennessee, Virginia, Missouri*