No. 13-1175

IN THE
Supreme Court of the United States

CITY OF LOS ANGELES,
Petitioner,

v.

NARANJIBHAI PATEL, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

E. Joshua Rosenkranz
Robert M. Loeb
Rachel Wainer Apter
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019

Orin S. Kerr
2000 H Street, NW
Washington, DC 20052

*Counsel of Record

Michael N. Feuer
City Attorney
James P. Clark
Chief Deputy City Attorney
Thomas H. Peters
Chief Assistant City Attorney
Gregory P. Orland*
Senior Counsel
700 City Hall East
200 North Main Street
Los Angeles, CA 90012
(213) 978-8160
gregory.orland@lacity.org

Counsel for Petitioner

QUESTIONS PRESENTED

City of Los Angeles Municipal Code § 41.49 requires hotels to record and maintain certain basic information about their guests in a register and to make the register available for police inspection. Plaintiffs brought a facial challenge asserting that § 41.49 violates the Fourth Amendment by authorizing unreasonable searches. The questions presented are:

1. In light of this Court's admonition that "[t]he constitutional validity of a warrantless search is preeminently the sort of question which can only be decided in the concrete factual context of the individual case," *Sibron v. New York*, 392 U.S. 40, 59 (1968), did the Ninth Circuit err in using a facial challenge to strike § 41.49 as a violation of the Fourth Amendment on reasonableness grounds?

2. Given the centuries-old regulation of inns and hotels, the City's century-long requirement that hotels allow the police to inspect the registers without notice, and the hotels' minimal expectation of privacy in basic guest information they collect for the City's benefit, did the Ninth Circuit err in holding that § 41.49 is unconstitutional on its face?

PARTIES TO THE PROCEEDINGS

The petitioner is the City of Los Angeles.

Respondents are Narajibhari Patel, Ramilaben Patel, the Los Angeles Lodging Association, Rajendrakumar N. Bhakta, Manjula Bhakta, Manharbhai G. Bhakta, Sarojben D. Bhakta, Praful K. Bhakta, Hitendra D. Bhakta, Pankaj Patel, Naranbhai Patel, Deepak Patel, Dinesh Patel, Jitubhai Bhakta, Ratlalbhai Patel, Ashokbhai Patel, Kamalbhai Patel, Dilip Denaplya Sanmukh Patel, Kishor Bhakta Raman Bhakta, Jayesh Bhajta, Mahedra Bhakta, Yogesh Patel, Sanmuka Bhakta, Pratap Bhakta, Jitendra Bhakta, Praful Patel, Nilesh Bhakta, Kiranbhaj Bhakta, Dilip Patel, Naresh Bhakta, Vijay Patel, Rambhai Patel, Pravin Bhakta, R.N. Ghandi Hasmukh Patel, and Bharatbhai Bhakta, all of whom are named plaintiffs and appellants in the related and consolidated cases CV05-1571 DSF, CV04-2192 DSF, and CV03-3610 DSF.

TABLE OF CONTENTS

Page(s)

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS ii

TABLE OF AUTHORITIES v

OPINIONS AND ORDERS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

INTRODUCTION 1

STATEMENT OF THE CASE 4

Los Angeles Law Has Long Required Hotels To Show Registers To Police On Request 4

Hotel Owners Bring A Facial Challenge, Which The District Court Rejects 8

A Ninth Circuit Panel Affirms, But The En Banc Court Reverses 9

SUMMARY OF THE ARGUMENT 12

ARGUMENT 16

I. A FACIAL CHALLENGE CANNOT BE USED TO STRIKE § 41.49 AS A VIOLATION OF THE FOURTH AMENDMENT ON REASONABLENESS GROUNDS 18

A. The Ninth Circuit Incorrectly Assumed One Hypothetical Application Of § 41.49 18

B. Facial Challenges Are Disfavored Generally And Are Particularly Ill-Suited In This Fourth Amendment Context 20

II. SECTION 41.49 IS NOT FACIALLY UNCONSTITUTIONAL 28

A. Section 41.49 Constitutes A Reasonable Administrative Inspection Scheme In A Closely Regulated Industry 29

1. Hotels are closely regulated in Los Angeles and nationwide 31

2. Section 41.49 meets *Burger*'s other three criteria. 37

B. Searches Conducted Under § 41.49 Are Reasonable. 47

1. Warrantless inspections of inns were permissible during the Founding era. 48

2. The City's compelling interest in deterring crime in hotels justifies any minimal infringement of a hotel's privacy 50

C. There Are Substantial Applications of § 41.49 That Are Constitutional 54

CONCLUSION 55

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

Arizona v. Hicks,
480 U.S. 321 (1987)..... 23

Cal. Bankers Ass'n v. Shultz,
416 U.S. 21 (1974).....52, 53

Camara v. Municipal Court,
387 U.S. 523 (1967)..... 43-45

City of Lakewood v. Plain Dealer Publ'g Co.,
486 U.S. 750 (1988)..... 25

City of Los Angeles v. Lyons,
461 U.S. 95 (1983)..... 25

The Civil Rights Cases,
109 U.S. 3 (1883)..... 51

Clapper v. Amnesty Int'l USA,
133 S. Ct. 1138 (2013)..... 25

Colonnade Catering Corp. v. United States,
397 U.S. 72 (1970).....45, 46

Crawford v. Marion Cnty. Election Bd.,
553 U.S. 181 (2008)..... 28

Donovan v. Dewey,
452 U.S. 594 (1981).....*passim*

Donovan v. Lone Steer, Inc.,
464 U.S. 408 (1984)..... 41

Gonzales v. Carhart,
550 U.S. 124 (2007).....13, 21

Illinois v. Gates,
462 U.S. 213 (1983)..... 42

Marshall v. Barlow's, Inc.,
436 U.S. 307 (1978).....46, 54

Maryland v. King,
133 S. Ct. 1958 (2013).....29, 47, 48

New York v. Burger,
482 U.S. 691 (1987).....*passim*

Payton v. New York,
445 U.S. 573 (1980)..... 27

Riley v. California,
134 S. Ct. 2473 (2014).....24, 47

Sabri v. United States,
541 U.S. 600 (2004)..... 21

See v. City of Seattle,
387 U.S. 541 (1967).....42, 54

Sibron v. New York,
392 U.S. 40 (1968).....12, 14, 23, 24

Skinner v. Ry. Labor Execs.' Ass'n,
489 U.S. 602 (1989)..... 23

United States v. Banks,
540 U.S. 31 (2003)..... 23

United States v. Biswell,
406 U.S. 311 (1972) 40, 42, 44, 46

United States v. Jones,
132 S. Ct. 945 (2012)..... 52

United States v. Raines,
362 U.S. 17 (1960)..... 22

United States v. Salerno,
481 U.S. 739 (1987).....10, 16, 29, 54

United States v. U.S. Dist. Court,
407 U.S. 297 (1972)..... 26

Vernonia Sch. Dist. 47J v. Acton,
515 U.S. 646 (1995).....22, 49, 50, 53

Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442 (2008)..... 21, 22

STATE CASES

Cutsinger v. Atlanta,
142 Ga. 555 (1914) 36

Weiss v. Herlihy,
23 A.D. 608 (N.Y. 1897) 50

FEDERAL STATUTES & CONSTITUTIONAL PROVISIONS

28 U.S.C. § 1254 1

U.S. Const. amend. I 26

U.S. Const. amend. IV 26-27, 29

U.S. Const. amend. XIV § 1 26

STATE STATUTES

Act Concerning Inns and Taverns, N.J. Laws Pat. 235 (1797), *reprinted in Laws of the State of New Jersey* (1821)..... 36

Act VIII, of Oct. 1, 1644, *reprinted in* 1 William Waller Hening, *The Statutes at Large, Being a Collection of All the Laws of Virginia* (2d ed. 1823) 34-35

Acts of the General Assembly of Pennsylania, *reprinted in* 1 Mathew Carey & J. Bioren, *Laws of the Commonwealth of Pennsylvania* (1803) 35

An Act For The Due Regulation Of Licenced Houses (1786), *reprinted in* Acts and Laws of the Commonwealth of Massachusetts (1893).....35, 49

An Act for Regulating Taverns, and Reducing Rates of Tavern License No. 459 (1791), *reprinted in* Robert Watkins & George Watkins, *Digest of the Laws of the State of Georgia* 453-54 (1800)..... 35

Anaheim, Cal., Code § 7.22.010..... 36

Bellevue, Wash., Code § 5.24.010. 36

Billings, Mont., Code § 7-602 36

Cal. Civ. Code § 1863 .....34, 53

Cal. Civ. Code § 1865 33

Cal. Code Regs. tit. 17, § 30852. 34

Cal. Code Regs. tit. 25, § 40 33

Cal. Penal Code § 365 33

Detroit, Mich., Code § 44-2-12 36

East Peoria, Ill., Code § 3-15-13 36

Greensboro, N.C., Code § 13-91 36

Jersey City, N.J., Code § 254-96..... 36

L.A., Cal., Mun. Code § 11.00 (1936)..... 1, 5

L.A., Cal., Mun. Code § 121.08(A)(12)..... 33

L.A., Cal., Mun. Code § 21.7.6 32

L.A., Cal., Mun. Code § 41.49 .....*passim*

L.A., Cal., Mun. Code § 47.01 (1936).....1, 5, 55

L.A., Cal., Mun. Code § 57.105.6.17 32

L.A., Cal., Ordinance 177966
(Oct. 6, 2006).....1, 5, 7, 37, 38

L.A., Cal., Penal Ordinances § 995
(1899).....1, 5, 34, 52

L.A., Cal., Penal Ordinances § 997 (1899) 1, 5, 34

Los Angeles Cnty, Cal., Code § 8.20.010 36-37

Madison, Wis., Code § 23.12 37

Missoula, Mont., Mun. Code § 5-16-050..... 37

Montgomery, Ala., Code § 6-62..... 37

N.H. Rev. Stat. Ann. § 353:3..... 37

N.Y. Crim. Proc. Law § 180-a 23

Norfolk, Va., Code § 22-7 37

Power and Duty of Selectmen, N.H. Laws (1791), *reprinted in Complete Justice of the Peace, Containing Extracts from Burn's Justice, and Other Justiciary Productions* (1806)..... 49

Rockford, Ill., Code § 105-436..... 37

Sacramento, Cal., Code § 5.76.010. 37

Spokane, Wash., Mun. Code § 17C.315.150..... 37

Stockton, Cal. Mun. Code § 5.44.010..... 37

Tucson, Ariz., Code § 7-441..... 37

Tulsa, Okla., Code § 27:1602. 37

Virginia Beach, Va., Code § 15-5 37

Wis. Admin. Code DHS § 195.16 37

Woodbridge, N.J., Revised Gen. Ordinances § 21-1.1. 36

OTHER AUTHORITIES

Louis Brandeis, *Other People's Money* (1914) 1

Cong. Research Serv., *The Constitution of the United States of America: Analysis and Interpretation*, S. Doc. No. 112-9 (Centennial ed. Interim ed. 2014) 27

William J. Cuddihy, *The Fourth Amendment Origins and Original Meaning 602-1791* (2009) 49

W.C. Firebaugh, *The Inns of the Middle Ages* (1924)..... 4

Frederick B. Jonassen, *The Law and the Host of the Canterbury Tales*, 43 J. Marshall L. Rev. 51 (2009) 34

Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 10.1(c) (5th ed. 2012).....41, 43

Note, *The Fourth Amendment and Housing Inspections*, 77 Yale L.J. 521 (1968)..... 43

Harrison Rhodes, *American Towns and People* (1920) 52

Nicholas Quinn Rosenkranz, *The Subjects of the Constitution*, 62 Stan. L. Rev. 1209 (2010)..... 26

Karin Schmerler, Center for Problem-Oriented Policing, *Disorder at Budget Motels* (2005).....2, 5, 6

Jefferson Williamson, *The American Hotel: An Anecdotal History* (1930).....4, 51

OPINIONS AND ORDERS BELOW

The district court's unpublished opinion is available at 2008 WL 4382755 and reprinted at P.A. 49-57. The panel decision of the court of appeals is reported at 686 F.3d 1085 and reprinted at P.A. 35-48. The en banc decision of the court of appeals is reported at 738 F.3d 1058 and reprinted at P.A. 1-34.

JURISDICTION

The court of appeals entered judgment on December 24, 2013. The petition for a writ of certiorari was timely filed on March 24, 2014, and granted on October 20, 2014. This Court has jurisdiction under 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

L.A., Cal., Mun. Code §§ 11.00 and 41.49, are reproduced in full at the statutory addendum at the end of this brief, as are their relevant precursors: L.A., Cal., Ordinance 177966 (Oct. 6, 2006); L.A., Cal., Mun. Code § 41.49 (1964); L.A., Cal., Mun. Code § 47.01 (1936); L.A., Cal., Penal Ordinances §§ 995-97 (1899); L.A., Cal., Mun. Code § 11.00(m) (1936).

INTRODUCTION

"[S]unlight is said to be the best of disinfectants." Louis Brandeis, *Other People's Money* 92 (1914). What Justice Brandeis said of public corruption holds equally true for the seedier crimes that have become the scourge of many cities, such as human trafficking, prostitution, and drug dealing. They all

flourish in the cast of anonymity and darkness. That is why hotels and motels often become hotbeds of crime. "The very nature of overnight lodging makes it conducive to crime and disorder." Karin Schmerler, Center for Problem-Oriented Policing, *Disorder at Budget Motels* 2 (2005). That is true of establishments as reputable as the Mayflower Hotel. But particularly problematic these days are so-called "parking-meter motels" that are a blight in many high-crime areas: Guests pay small hourly rates, in cash, to conduct their illicit business, and slink in and out anonymously and undetected.

The City of Los Angeles has a simple strategy to use sunlight to deter crime in hotels and motels of all sorts: an ordinance, Los Angeles Municipal Code ("LAMC") § 41.49, that requires hotel operators to record basic information about their guests and make the registers available for police inspection. Prostitutes, johns, dealers, and other criminals who know that the police can scan a hotel's register at any time think twice about conducting their illicit activities in the hotel. The strategy has been remarkably successful in deterring crime, which is why scores of cities throughout the country have adopted it.

This deterrent has a long tradition. The City of Los Angeles passed a version of the ordinance more than 100 years ago—long before the emergence of parking-meter motels and, indeed, before common folk had motor vehicles. Throughout, the ordinance has required hotels to make the registers available for police inspection. These requirements went unchallenged for over a century until Plaintiffs, a

group of motel owners and operators, sued in 2003. Plaintiffs (Respondents, here) do not dispute that the City may constitutionally require them to record the information and maintain the register. Nor do they press an argument that the ordinance has been unconstitutionally applied to them in any particular case. Instead, Plaintiffs challenge § 41.49 only on its face, contending that the provision that permits the police to inspect registers without a warrant violates the Fourth Amendment.

The Ninth Circuit sustained the facial challenge, gutting § 41.49 of the one attribute that makes it such an effective deterrent: the element of surprise that ensures that hotel owners always collect the relevant information and that puts criminals and their customers in fear of detection. In so doing, the Ninth Circuit erred both procedurally and on the merits.

Procedurally, a facial challenge is not the proper vehicle for assessing the reasonableness of searches authorized by § 41.49 under the Fourth Amendment. The Ninth Circuit had no particular search before it, no police implementing policy, and no concrete facts. So it made a series of assumptions about searches conducted under § 41.49, and then attempted to apply the law to its single hypothetical factual scenario. In so doing, it never even considered all the applications and factual scenarios that would entail different analyses and could yield different outcomes.

On the merits, § 41.49 is a reasonable administrative search regime in a closely regulated

business under the framework established in *New York v. Burger*, 482 U.S. 691 (1987). The Ninth Circuit dismissed this argument in a footnote, asserting that "no serious argument can be made" that hotels are pervasively regulated. Petition Appendix ("P.A.") 13 n.2. But they are, and have been for centuries. Section 41.49 should be upheld on the basis of this established exception to the warrant requirement alone. In any event, even without this exception, the inspections authorized by § 41.49 are reasonable. The City's interests in enforcing hotels' obligations to collect the information and in deterring crime outweigh any minimal intrusion upon the individual privacy of hotel owners with respect to basic guest information they concede they can legally be required to collect on the City's behalf.

The judgment should be reversed.

STATEMENT OF THE CASE

Los Angeles Law Has Long Required Hotels To Show Registers To Police On Request

Since the Middle Ages, innkeepers have kept registers in which visitors inscribed their names. *See* W.C. Firebaugh, *The Inns of the Middle Ages* 124-25 (1924). The tradition carried over to America, where hotel registers were so ubiquitous, and so openly reviewed, that scouring the register became "one of America's most popular indoor sports." Jefferson Williamson, *The American Hotel: An Anecdotal History* 181 (1930). Los Angeles codified the age-old practice into law. Since 1899,

Los Angeles has consistently required hotels to record information about their guests, and to make the guest registers available for inspection. That version of the ordinance required any "lodging house, rooming house or hotel" operator to keep a register inscribed with the name, room number and registration date of "all guests, roomers or lodgers." L.A., Cal., Penal Ordinances § 995 (1899) (recodified at LAMC § 47.01 (1936), repealed by L.A., Cal., Ordinance 177966 (Oct. 6, 2006)). The ordinance commanded that the register "shall be kept in a conspicuous place [in the hotel], and shall at all times be open to inspection by the lodgers, roomers or guests … and to the Chief of Police or any regular policeman or police detective of said City of Los Angeles." *Id.* A violation of the ordinance was a misdemeanor, punishable by a $100 fine and 50 days in jail. *Id.* § 997. The City Council amped up the penalties to a fine of up to $500 and up to six months' imprisonment in 1936. LAMC § 11.00(m) (1936).

In 1964, the City Council added § 41.49, which is the subject of this case. Section 41.49 required motel operators to record the name and "address of each guest," and, if the guest travelled by car, the vehicle's make, type, year of registration, and license plate. Section 41.49 also required that the register be "at all times … open for inspection to all police officers." LAMC § 41.49 (1964).

The next four decades saw the development of parking-meter motels that catered to the lowest end of the market. *See* Karin Schmerler, Center for Problem-Oriented Policing, *Disorder at Budget Motels* 4-5 (2005). Criminals of all sorts flocked to low-

budget motels in high-crime areas. *Id.* at 1-10. They could pay as little as $15 for an hour of illicit activity in privacy. JA 216-17. The sorts of establishments that rent rooms by the hour often know that hourly guests are up to nothing good in those motel rooms. But they happily take the cash and whisk the guests to their rooms without filling out the register. *See* Schmerler, *supra,* at 5 & cmt. 2 (describing how motels that are "financially strained" are "unlikely to have the will or resources to stop" crime).

In 2006, the Los Angeles City Council amended § 41.49 to address patterns that were prevalent at these parking-meter motels and to consolidate regulation of all lodging businesses: motels, hotels, inns, etc., all in one provision (and, relatedly, repealed LAMC § 47.01 as largely redundant). Section 41.49 covers any hotel, inn, hostelry, tourist home, motel, lodging house or motel rooming house (which, for convenience, we refer to generically as "hotels"). Under that provision, hotels must record and maintain the following basic information about their guests: name; address; make, model, and license plate number of the guest's vehicle "if the vehicle will be parked on hotel premises"; date and time of the guest's arrival and scheduled departure; room number; "rate charged"; and "method of payment for the room" (cash, check or credit card). LAMC § 41.49(2)(a). Section 41.49 requires more information from guests who exhibit behaviors that are particularly prevalent among criminals: paying for a room in cash, "walk[ing] in" without prior reservation, or renting a room by the hour or "for fewer than 12 hours." *Id.* § 41.49(4). For those guests, the register must also include the number and expiration

date of an identification document presented by the guest at time of check-in. *Id.*

Section 41.49 allows the hotel owner to maintain the required records in a book (permanently bound and sequentially numbered), on cards (numbered consecutively and used in sequence), or electronically (so long as it is printable). *Id.* § 41.49(3)(c). The owner must store the records in the hotel's "guest reception or guest check-in area or in an office adjacent to that area" and maintain them for 90 days. *Id.* § 41.49(3)(a). The ordinance no longer requires that the hotel keep those records open for inspection by all lodgers and guests.

Plaintiffs concede that all these requirements are permissible. They challenge a provision that has been in effect in one form or another since 1899: The requirement that the register "shall be made available to any officer of the Los Angeles Police Department for inspection." *Id.* The ordinance further provides: "Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." *Id.*

The City Council declared that the purpose of § 41.49 is to "discourag[e] the use of hotel and motel rooms for illegal activities, particularly prostitution and narcotics offenses." L.A., Cal., Ordinance 177966 (Oct. 6, 2006). The City Council recognized that "persons who rent rooms for illegal purposes generally pay for their rooms with cash, … [and] do not have advance reservations." *Id.* They also prefer to maintain anonymity. *Id.* Therefore, the Council concluded that requiring hotel guests to provide

identification "will preserve the rights of consumers to use hotels and motels for legitimate purposes while discouraging the use of hotel and motel rooms for illegal activities, particularly prostitution and narcotics offenses." *Id.* The Council further explained that "requiring certain minimum information to be maintained in hotel and motel registers and inspection of hotel and motel registers by the police department is a significant factor in reducing crime in hotels and motels." *Id.*

Hotel Owners Bring A Facial Challenge, Which The District Court Rejects

In 2003, Plaintiffs—a group of motel owners and operators along with a lodging association—sued the City in three consolidated cases challenging the constitutionality of § 41.49. The operative complaint asserted that § 41.49 violated the Fourth Amendment, both on its face and as applied. J.A. 186-87. By stipulation, however, Plaintiffs dropped their as-applied challenge, for reasons not explained in the record. The stipulation, which the district court adopted as an order, stated that "the sole issue in the consolidated action is a facial constitutional challenge to LAMC section 41.49 under the Fourth Amendment." J.A. 195. The parties also stipulated that "[p]laintiffs have been subject and continue to be subject to searches and seizures of their motel registration records by the [LAPD] without consent or warrant pursuant to … section 41.49." J.A. 194-95.

Although there were no disputed questions of fact, the district court held what it termed a "bench

trial." Plaintiffs offered no witnesses and introduced no evidence. The entire proceeding lasted 24 minutes and was limited to oral argument on the law. The only two exhibits offered were copies of the relevant ordinance provisions. J.A. 227-28.

The district court held that § 41.49 was not facially unconstitutional. Specifically, it concluded that hotel owners have no "reasonable expectation of privacy in [these] registers created pursuant to a municipal mandate." P.A. 56. The court rejected Plaintiffs' argument "that the registers are business records that they may use for other purposes," noting that "it does not appear that they are prevented from maintaining a separate set of documents containing the same or similar information in another location not subject to inspection." *Id.* The court explained that § 41.49 "can be reasonably interpreted as a measured ordinance meant to discourage and fight crime in hotels and motels" and that Plaintiffs had not "met the high burden of showing that § 41.49 cannot be valid under any circumstances." P.A. 57. Thus, the court concluded that § 41.49 "is not unconstitutional on its face." *Id.*

The City had extensively briefed its argument that § 41.49 authorizes reasonable administrative inspections under the framework set forth in *New York v. Burger*, 482 U.S. 691 (1987). J.A. 203-13. The court found it unnecessary to decide that question. P.A. 55.

A Ninth Circuit Panel Affirms, But The En Banc Court Reverses

A panel of the Ninth Circuit affirmed. The panel explained that Plaintiffs "have provided no evidence or other basis for us to conclude that they have an objectively reasonable expectation of privacy in the information covered by this ordinance, let alone that all hotel operators do." P.A. 43. Further, the panel noted that Plaintiffs had not "demonstrated that the inspection of guest registers authorized by the ordinance is an unreasonable intrusion." P.A. 46. Because Plaintiffs "cannot 'establish that no set of circumstances exist under which the Act would be valid,'" P.A. 43 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)), the panel held that they "cannot meet the standard for a successful facial challenge." P.A. 43. Like the district court, the panel found it unnecessary to decide whether the ordinance could also be justified as a "warrantless administrative search under *Burger*." P.A. 45.

A divided en banc panel (7-4) reversed. Because it lacked a factual record, the Ninth Circuit first assumed one hypothetical circumstance that it thought "§ 41.49 appears to contemplate," "[a]s a general rule." P.A. 10-11. In the Ninth Circuit's hypothetical, the LAPD would enter a hotel that stored its register behind the desk "in the 'guest reception or guest check-in area,'" P.A. 11, "demand to inspect [the] hotel's guest records" in real time, P.A. 12, and then "rifle through the records" right in the hotel lobby, P.A. 9.

The Ninth Circuit then ruled that § 41.49 was invalid because it did not meet all of the requirements for an administrative subpoena scheme, P.A. 11-13, even though that was not the basis on which the City defended the statute and neither party argued that § 41.49 authorizes an administrative subpoena. Specifically, the Ninth Circuit held that although a request to inspect a register was "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance [would] not be unreasonably burdensome," P.A. 11-12 (citation omitted), § 41.49 was "facially invalid under the Fourth Amendment" because it authorized records inspections "without affording an opportunity to obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." P.A. 13 (internal quotation marks omitted).

As in the district court, the City's brief before the Ninth Circuit relied heavily on *Burger*, *see* J.A. 249-57. But the Ninth Circuit dismissed *Burger* in a footnote, stating only that "no serious argument can be made that the hotel industry has been subjected to the kind of pervasive regulation that would qualify it for treatment under the *Burger* line of cases." P.A. 13. Likewise, the Ninth Circuit refused to analyze the reasonableness of searches authorized by § 41.49, holding that that "balance has already been struck." P.A. 9.

Four judges dissented in two separate opinions. Judge Tallman concluded that the case could not be resolved by facial challenge, as the Fourth Amendment "has always prohibited specific government conduct—'unreasonable searches and seizures'—not

legislation that could potentially permit such conduct." P.A. 15. As Judge Tallman explained, "[i]t is for this reason that the Supreme Court has held that '[t]he constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case.'" *Id.* (quoting *Sibron v. New York*, 392 U.S. 40, 59 (1968). He therefore would have "decline[d] the Patels' invitation" "to assume the exercise of analyzing *all* potential searches that *might be* conducted pursuant to the ordinance in order to declare it deficient," "because the Supreme Court has told us to avoid the exercise altogether." P.A. 15-16 (emphasis in original).

Judge Clifton concluded that even if a facial challenge could be brought, "[t]he absence of judicial review establishes only that the ordinance might not qualify for the recognized exception for administrative subpoenas" but it does not show that a search pursuant § 41.49 would be unreasonable in all circumstances. P.A. 27-28. He criticized the majority opinion for failing "to establish that a search of records under the ordinance would be unreasonable, the ultimate standard imposed under the Fourth Amendment. Instead, to the extent that it deals with the issue at all, it simply accepts Plaintiffs' assertion to that effect, supported by no evidence whatsoever." P.A. 25. "[B]ecause Plaintiffs presented no evidence about the treatment of guest registry information," one could not "simply assume that hotels in general expect information contained in their guest registers to be private." P.A. 32. He therefore would have affirmed the district court's judgment. P.A. 25-34.

SUMMARY OF THE ARGUMENT

The City can prevail against Plaintiffs' facial Fourth Amendment challenge on three independent grounds—one procedural and two on the merits.

I. Procedurally, a facial challenge is not the appropriate vehicle for resolving this case. Instead of considering all the circumstances under which an officer might invoke § 41.49 to inspect a hotel register, the Ninth Circuit erroneously assumed one hypothetical set of facts that it thought "§ 41.49 appears to contemplate," "[a]s a general rule." P.A. 10-11. But an inspection under § 41.49 could entail a host of different fact-bound scenarios.

The Ninth Circuit's approach runs headlong into the principle that facial challenges to statutes are "disfavored." Abstract facial challenges like this strip a court of the "basic building blocks of constitutional adjudication," *Gonzales v. Carhart*, 550 U.S. 124, 168 (2007)—*i.e.*, factual context and real world application of the law. Moreover, a law passed by the democratically elected representatives of the people deserves the highest respect of the judiciary. The Ninth Circuit's facial ruling means the City is not permitted even to *consider* ways to adapt its approach to the infirmities the court identified.

These serious concerns are particularly pronounced when seeking to strike a law under the Fourth Amendment as authorizing unreasonable searches, which is why this Court has held that "[t]he constitutional validity of a warrantless search is pre-eminently the sort of question which can only

be decided in the concrete factual context of the individual case." *Sibron*, 392 U.S. at 59.

The touchstone of any Fourth Amendment analysis is reasonableness and that inquiry turns on the circumstances surrounding the search as well as the nature of the search itself. Assessing the general reasonableness of the administrative searches contemplated by § 41.49 thus requires weighing the degree to which the searches intrude upon an individual's privacy against the degree to which the searches are necessary to promote legitimate governmental interests. That cannot be done in a factual vacuum.

Notably, this Court has never invalidated a statute as authorizing unreasonable searches or seizures based on a bare Fourth Amendment challenge, like this one, without any factual record and without any challenge to the law's implementation in a concrete setting. It has, however, rejected challenges to statutes establishing reasonable administrative search regimes in closely regulated businesses under *New York v. Burger*, 482 U.S. 691 (1987).

II. A. Section 41.49 constitutes a reasonable administrative inspection scheme in a closely regulated industry under the framework established in *Burger*. The City of Los Angeles has required hotel owners to record certain information about their guests, and to make their registers available for police inspection, since 1899, far longer than the eight-year-old inspection scheme at issue in *Burger*. Inns have been regulated since medieval England, and close regulation continued in the colonies. Today,

there are more than 100 ordinances and statutes similar to § 41.49 in effect across the country.

Los Angeles has a substantial interest in ensuring that hotels do not become havens for crime. Warrantless inspections of hotel registers are necessary to further this important interest. As the City Council explained, because criminals prefer to remain anonymous, requiring hotels to record and maintain basic information about their guests, and make that information available for police inspection, deters criminal activity.

Section 41.49 is an adequate substitute for a warrant. By explicitly requiring hotel owners to maintain certain records and to make the required records available for police inspection, it advises hotel owners that inspections are conducted pursuant to law and are not discretionary acts of law enforcement.

Section 41.49 is also sufficiently limited in time, place, and scope. The only item police officers are permitted to inspect is a register—a single bound book, stack of cards, or electronic document. And because the records must be maintained in the "guest check-in area or in an office adjacent to that area," LAMC § 41.49(3)(a), it is entirely up to the hotel operator where the officer reviews the register. And "[w]henever possible" the inspection must be conducted "at a time … that minimizes any interference with the operation of the business." *Id.*

B. Even if the established exception to the warrant requirement under *Burger* does not apply, § 41.49 still must be sustained because the applica-

tion that the Ninth Circuit hypothesized is reasonable.

The application of § 41.49 envisioned by the Ninth Circuit is reasonable because warrantless inspections of inns were commonplace at the time of the nation's founding. In addition, the individual privacy concerns pale in comparison to the City's legitimate interest in deterring prostitutes, drug dealers, and other serious criminals from committing crimes in hotels. Hotels have only a limited privacy interest in their required registers. Guest registers were open for guest inspection for hundreds of years, including by law in Los Angeles from 1899 to 2006. Moreover, a register of guests' names, addresses, and license plate numbers is not highly personal information about the hotel. The record inspections contemplated by § 41.49 are also particularly unobtrusive as the police need never step foot into the hotel's private places and are authorized to look only at the register itself.

Expanding the focus beyond the hypothetical situation the Ninth Circuit considered, this Court cannot strike § 41.49 statute on its face unless "no set of circumstances exists under which the Act would be valid." *Salerno*, 481 U.S. at 745. This Court could affirm simply by concluding that some of the other scenarios discussed below are plainly constitutional, without even addressing the constitutionality of the Ninth Circuit's hypothetical.

ARGUMENT

Plaintiffs brought a Fourth Amendment challenge arguing that § 41.49 must be struck on its face.

As relevant here, the City defends on three bases—a procedural and two on the merits of the Fourth Amendment claim. The procedural (or, more accurately, prudential) defense is that it was impermissible to decide the reasonableness of searches conducted under § 41.49 on the face of the ordinance. The merits defenses are: (1) that § 41.49 is valid as an ordinance that authorizes a reasonable administrative search regime in a closely regulated business under the framework established in *New York v. Burger*, 482 U.S. 691 (1987); and (2) that the searches conducted pursuant to § 41.49 are reasonable when the City's interests are balanced against the intrusion on hotel owners' privacy (which, for simplicity, we refer to as "reasonableness balancing").

The Ninth Circuit blew past the procedural issue without a word, rejected the *Burger* defense in a two-sentence footnote, and considered the reasonableness balancing irrelevant. The court was triply wrong and the City can prevail on any of these three grounds. First, a facial challenge cannot be used to strike § 41.49 as a violation of the Fourth Amendment because facial challenges are highly disfavored, and Fourth Amendment challenges that depend on balancing considerations of reasonableness in a variety of possible factual scenarios and applications are especially inappropriate. This Court could reverse on that basis alone and never reach either merits issue.

Alternatively, this Court is free to reverse the Ninth Circuit based on *Burger*. *Burger* does not depend on any factual record or specific application, but on the history of regulation, the governmental

interest, and the ordinance's wording. Section 41.49 satisfies all the *Burger* criteria.

Finally, even if this Court concludes that *Burger* does not apply and that it is permissible to conduct the reasonableness balancing on the face of the ordinance, this Court should reverse. The search conducted pursuant to § 41.49 that the Ninth Circuit hypothesized is reasonable under the Fourth Amendment.

I. A FACIAL CHALLENGE CANNOT BE USED TO STRIKE § 41.49 AS A VIOLATION OF THE FOURTH AMENDMENT ON REASONABLENESS GROUNDS.

In striking § 41.49 on its face, the Ninth Circuit offered no response to the four-judge dissent arguing at length that this "facial challenge leaves us with insufficient facts regarding the unconstitutional conduct [Plaintiffs] allege has occurred," and that "[t]he majority's decision to nonetheless entertain the facial challenge eschews Supreme Court guidance to the contrary." P.A. 17. The dissent is correct. There are numerous factual variables that are material to the reasonableness balancing of the searches that § 41.49 authorizes. § I.A. This Court has explained that facial adjudication of fact-bound issues is disfavored in general and is particularly ill-suited to Fourth Amendment reasonableness balancing—and this case is no exception. § I.B.

A. The Ninth Circuit Incorrectly Assumed One Hypothetical Application Of § 41.49.

Instead of considering all the circumstances under which an officer might invoke § 41.49 to inspect a hotel register, the Ninth Circuit assumed one hypothetical set of facts that it thought "§ 41.49 appears to contemplate," "[a]s a general rule." P.A. 10-11. In the Ninth Circuit's hypothetical, the LAPD would enter a hotel that stored its register behind the desk "in the 'guest reception or guest check-in area,'" P.A. 11, "demand to inspect [the] hotel's guest records" in real time, P.A. 12, and then "rifl[e] through the records" right in the hotel lobby, P.A. 9.

For reasons we explain in § II, the hypothetical search the Ninth Circuit singled out for review would be constitutional. But the Ninth Circuit was wrong in assuming one hypothetical factual scenario. An inspection under § 41.49 could entail a host of different fact-bound scenarios, including the following:

1. The hotel leaves the required register open to all guests (as all Los Angeles hotels were legally required to do for more than 100 years) and does not consider it to be at all private.

2. The City requires any hotel that uses an electronic register to enter the information into a City database in real time over the Internet. The police officer inspects the register online from his laptop.

3. The City seeks to inspect on command only a redacted version of the register that reveals no customer names and examines only the number of entries to verify in real time that the hotel is maintaining the register and that it roughly corresponds to the number of vehicles in the lot.

4. Confronted with an exigency (*e.g.,* an amber alert or a 911 call from the hotel), an officer asks to see the register. The hotel owner keeps the register on a password-protected computer and refuses. The officer invokes § 41.49 to threaten imprisonment and a $1,000 fine to compel the owner to enter his password and allow the officer to view the register.

5. The police have probable cause to believe that a hotel register contains evidence of an ongoing crime and secure a warrant. The hotel owner, however, hides the register. Instead of tearing the hotel apart, an officer threatens the owner with jail time if he refuses to turn over the register.

The Ninth Circuit believed that the search it hypothesized gave the City "the benefit of the doubt at each turn." P.A. 10-11. But these scenarios demonstrate otherwise. Each represents either less of an intrusion on privacy or a different state interest, or both.

B. Facial Challenges Are Disfavored Generally And Are Particularly Ill-Suited In This Fourth Amendment Context.

In light of the number and diversity of the factual variables and scenarios, the Ninth Circuit erred in finding § 41.49 unconstitutional on its face.

1. The Ninth Circuit's approach runs headlong into the principle that facial challenges to statutes are "disfavored," *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008), because they ask a court to "pass on the validity of a law wholesale," irrespective of its enforcement or application, *Sabri v. United States*, 541 U.S. 600, 609 (2004). In indulging a hypothetical application that "§ 41.49 appears to contemplate," "[a]s a general rule," P.A. 10-11, the Ninth Circuit presented a classic illustration of why abstract facial challenges are disfavored.

That inquiry strips a court of the "basic building blocks of constitutional adjudication," *Carhart*, 550 U.S. at 168—*i.e.,* factual context and real world application of the law. The Ninth Circuit's decision to invoke a hypothetical was a textbook case of how "[c]laims of facial invalidity often rest on speculation," which "raise[s] the risk of 'premature interpretation of statutes on the basis of factually barebones records.'" *Wash. State Grange*, 552 U.S. at 450 (quoting *Sabri*, 541 U.S. at 609). It is relevant to the reasonableness balancing of any particular search whether the officer does only what the hotel allows lodgers and guests to do (scenario 1); whether the

hotel operator actually treats the records as private (scenario 1); whether the officer never steps foot on the premises when inspecting the information the hotel is legally obligated to maintain (scenario 2); whether the information inspected reveals guests' names (scenario 3); or whether a warrant or exigency could justify invoking the inspection power to compel compliance (scenarios 4 and 5).

This case also vividly displays how "facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Wash. State Grange*, 552 U.S. at 451. Whether enacted by Congress or a city council, the "delicate power" of pronouncing such legislative enactments "unconstitutional is not to be exercised with reference to hypothetical cases thus imagined." *United States v. Raines*, 362 U.S. 17, 22 (1960). The antidemocratic consequences of the Ninth Circuit's approach are especially pronounced because the court deprived the City of any opportunity to adapt to the Ninth Circuit's constitutional ruling. The Ninth Circuit's facial ruling means the City is not permitted even to *consider* other ways to require hotel owners to "ma[k]e available" the register "for inspection," short of a warrant, nor to invoke this ordinance no matter how well it "minimiz[es] any interference with the operation of the business." LAMC § 41.49(3)(a).

2. These serious concerns are particularly pronounced when a lawsuit seeks to strike a law under the Fourth Amendment as authorizing unreasonable searches. The touchstone of any Fourth Amendment

analysis is reasonableness. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 652 (1995). "What is reasonable, of course, depends on all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." *Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602, 619 (1989) (internal quotation marks omitted). Reasonableness requires balancing the search's "intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." *Id.* Consequently, Fourth Amendment outcomes frequently turn on such factual details as whether equipment is moved "even a few inches" to expose hidden serial numbers, *Arizona v. Hicks*, 480 U.S. 321, 325 (1987), or whether officers wait "15 to 20 seconds" before entry after knocking on a door, *United States v. Banks*, 540 U.S. 31, 39 (2003). Such detail is wholly absent when a court reviews a statute in a factual vacuum, as the Ninth Circuit did here.

That is why this Court, in *Sibron v. New York*, held that "[t]he constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." 392 U.S. at 59. There, two individuals had been arrested and convicted following stops pursuant to New York's stop-and-frisk statute. The statute "purport[ed] to authorize police officers to 'stop' people, 'demand' explanations of them and 'search (them) for dangerous weapon(s).'" *Id.* at 60 (quoting N.Y. Crim. Proc. Law § 180-a). They persuaded this Court that the specific searches were unconstitutional. But this Court refused to entertain a facial challenge to the statute.

In words that could have been written for this case, this Court explained it would be wrong to "pronounce judgment on the words of the statute" and its "abstract validity." *Id.* at 60 n.20, 62. The Court confined its "review instead to the reasonableness of the searches and seizures" actually before the Court. *Id.* at 62. *Sibron* stressed the conceptual and practical difficulty of seeking to strike down a statutory search power as "unreasonable" under the Fourth Amendment without knowing how the statute was to be interpreted and applied. *See id* at 59-62. "The question in this Court upon review of a state-approved search or seizure is not whether the search (or seizure) was authorized by state law. The question is rather whether the search was reasonable under the Fourth Amendment." *Id.* at 61 (internal quotation marks omitted).

So, too, here. Assessing the general reasonableness of the searches contemplated by § 41.49 requires weighing the degree to which the searches "intrude[] upon an individual's privacy," against the degree to which the searches are "needed for the promotion of legitimate governmental interests." *Riley v. California*, 134 S. Ct. 2473, 2484 (2014). Without facts, that is an "abstract and unproductive exercise." *Sibron*, 392 U.S. at 59.

3. In some limited contexts, the dangers of facial challenges are outweighed by the practical consideration that a facial challenge is necessary to vindicate a constitutional right. The classic example is the First Amendment setting, where this Court has sanctioned facial challenges "when statutes threaten [to chill speech] to a significant degree." *City of*

Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750, 759 (1988). Facial challenges in that context are necessary because the very existence of the offending statute *itself* leads to self-censorship. *See id.* at 757-58 ("Self-censorship is immune to an 'as applied' challenge" and "only a facial challenge can effectively test the statute for these standards.").

No such practical considerations are at play in determining the general reasonableness of searches conducted pursuant to an ordinance. To bring any Fourth Amendment challenge, a plaintiff must demonstrate "that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983) (internal quotation marks omitted); *see Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1150 (2013) (plaintiff must show "injury based on potential future surveillance [that] is certainly impending or is fairly traceable to" the statute or practice challenged). Accordingly, in the Fourth Amendment context, the mere existence of a statute or announced practice cannot satisfy the standing requirement or establish a case or controversy. A plaintiff pursuing a Fourth Amendment challenge must allege how the implementation of the law has or will likely cause him injury. Thus, a plaintiff who satisfies Article III should generally be able to bring an as-applied challenge.

That is certainly the case with § 41.49. Not only could Plaintiffs have filed a suit challenging how the

LAPD was applying § 41.49 to them, but they *did*. For reasons known only to Plaintiffs, they chose to drop their as-applied challenge. Instead, they decided to try to wipe § 41.49 off the books entirely, without regard to how it is being construed and implemented in the real world, without offering the court any factual record, without affording the City an opportunity to adapt to any constitutional ruling by narrowing its interpretation, and without considering all of the possible different fact-bound scenarios in which an inspection could occur. This Court cannot strike § 41.49 on that basis.

4. The text of the Fourth Amendment provides no support for the Ninth Circuit's expansionist approach. Some constitutional provisions directly target legislative enactments, and, accordingly may suggest a more liberal approach to challenging legislative enactments on their face. For example, the First Amendment is directed at "Congress," which "shall make no law ...." U.S. Const. amend. I. Similarly, part of the Fourteenth Amendment is directed at state legislatures, U.S. Const. amend. XIV § 1 ("No state shall make … any law ..."). Thus, the texts of those provisions may provide some extra license to engage in a facial challenge to the enactment of a law.

The Fourth Amendment's text points in the opposite direction. *See* Nicholas Quinn Rosenkranz, *The Subjects of the Constitution*, 62 Stan. L. Rev. 1209, 1239-41 (2010). The text is not directed at any legislature or any law. The first clause prohibits "unreasonable searches and seizures"—which are conducted by the executive branch. U.S. Const.

amend. IV; *see United States v. U.S. Dist. Court*, 407 U.S. 297, 316-317 (1972). Legislatures do not conduct searches and seizures. As Judge Tallman explained, the Fourth Amendment "prohibit[s] specific government conduct—'unreasonable searches and seizures'—not legislation that could potentially permit such conduct." P.A. 15.

5. Notably, this Court has never invalidated a statute as authorizing unreasonable searches or seizures based on a bare Fourth Amendment challenge, like this one, without any factual record and without any challenge to the law's implementation in a concrete setting. *See* Cong. Research Serv., *The Constitution of the United States of America: Analysis and Interpretation*, S. Doc. No. 112-9, at 2287-536 (Centennial ed., Interim ed. 2014) (listing all statutes that this Court has held unconstitutional through July 1, 2014).

To be sure, in the course of finding a search unconstitutional in an as-applied challenge, this Court has sometimes imprecisely stated that "statutes" authorizing the searches "are not consistent with the Fourth Amendment." *Payton v. New York*, 445 U.S. 573, 576 (1980) (reviewing motions to suppress evidence secured under statutory authorization and making that statement even though the only remedy the defendants received was the suppression of evidence in their particular cases). But that does not change the fact that the Court generally does not strike statutes on their face under the Fourth Amendment, much less strike them in a factual vacuum.

In contrast, courts are capable of making some Fourth Amendment determinations without any consideration of case-specific facts. This case involves one such determination: A warrantless search is reasonable when performed pursuant to a statute qualifying as a reasonable administrative search regime in a closely regulated business, so long as (1) a substantial government interest informs the regulatory scheme; (2) warrantless inspections are necessary to further the government interest; and (3) the statute on its face provides a constitutionally adequate substitute for a warrant. *See Burger*, 482 U.S. at 702. These determinations are made solely by looking to the language and legislative history of the statute and the history of regulation of the industry, not by considering the facts of any particular search.

This Court is free to conduct that legal analysis here. Because § 41.49 meets all of the *Burger* requirements (for the reasons we discuss next in § II.A.), the Ninth Circuit must be reversed. But whether or not § 41.49 meets the *Burger* requirements, this Court cannot affirm without concluding both that a facial challenge is permissible (contrary to the principles discussed to this point) *and* that the searches the Ninth Circuit hypothesized are unreasonable (contrary to § II.B.).

II. SECTION 41.49 IS NOT FACIALLY UNCONSTITUTIONAL.

Plaintiffs have failed to sustain their "heavy burden," *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 200 (2008), of proving that "no set of cir-

cumstances exists under which the [ordinance] would be valid," *Salerno*, 481 U.S. at 745. The Fourth Amendment does not prohibit all searches, but only "unreasonable searches," U.S. Const. amend. IV; *see Maryland v. King*, 133 S. Ct. 1958, 1968-69 (2013). Here, § 41.49 does not violate the Fourth Amendment for three independent reasons.

First, § 41.49 is a reasonable administrative search regime in a closely regulated business under the framework established in *Burger*. § II.A. Second, the hypothetical search the court of appeals considered—where police officers enter the hotel and request to see records stored behind the desk—is reasonable, because the governmental interests justifying § 41.49 outweigh any minimal intrusion upon individual privacy. § II.B. Third, regardless of the constitutionality of the application the Ninth Circuit hypothesized, this facial challenge must fail, because there are multiple substantial applications of § 41.49 that are constitutional. § II.C.

A. Section 41.49 Constitutes A Reasonable Administrative Inspection Scheme In A Closely Regulated Industry.

This Court has repeatedly upheld "legislative schemes authorizing warrantless administrative searches of commercial property." *Donovan v. Dewey*, 452 U.S. 594, 598 (1981). A warrant is not required where the legislature "has reasonably determined that warrantless searches are necessary to further a regulatory scheme" and when the "regulatory presence is sufficiently comprehensive and defined that the owner of commercial property cannot

help but be aware that his property will be subject to periodic inspections undertaken for specific purposes." *Id.* at 600. The idea is that owners of "commercial premises" in "closely regulated" industries have "reduced expectation[s] of privacy," and the "government interests in regulating" such business are "concomitantly heightened." *Burger*, 482 U.S. at 702 (citation omitted).

This Court established the framework for invoking this exception to the warrant requirement in *New York v. Burger*. *Burger* considered a challenge to a state statute bearing a striking resemblance to § 41.49. It imposed fairly modest burdens on vehicle dismantlers, along with a record-keeping requirement. *Id.* at 704-05. Most relevant here, the statute provided: "Upon request … of any police officer and during his regular and usual business hours, a vehicle dismantler shall produce such records and permit said agent or police officer to examine them and any vehicles or parts of vehicles which are subject to the record keeping requirements of this section …." *Id.* at 694 n.1. This Court held that the inspection scheme fell within the "established exception to the warrant requirement for administrative inspections in closely regulated businesses." *Id.* at 703 (internal quotation marks omitted).

This Court explained that a warrantless inspection regime is reasonable where the business operates in a "pervasively" or "closely" regulated field and satisfies three criteria: (1) "there must be a 'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made"; (2) "warrantless inspections must be 'necessary to further [the] regulatory scheme'"; and (3)

the ordinance itself must provide a "constitutionally adequate substitute for a warrant," both in terms of "certainty" and "regularity" of application. *Id.* at 702-03 (quoting *Dewey*, 452 U.S. at 601-03). We address the "closely regulated" threshold and the three *Burger* criteria in turn.

1. Hotels are closely regulated in Los Angeles and nationwide.

The Ninth Circuit's two-sentence footnote rejecting this exception was premised entirely on the view that "no serious argument can be made that the hotel industry has been subjected to the kind of pervasive regulation that would qualify it for treatment under the *Burger* line of cases." P.A. 13 n.2. It was wrong.

a. An industry is "closely" regulated if "the 'regulatory presence is sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes.'" *Burger*, 482 U.S. at 705 n.16 (quoting *Dewey*, 452 U.S. at 600). In *Burger*, this Court held that vehicle dismantlers satisfied the definition mainly because they endured certain fairly routine burdens: They had to obtain a license and registration number from the Department of Motor Vehicles; display the registration number prominently at the business, on business records, and on all vehicles and parts; maintain a book recording purchases and sales of vehicles and vehicle parts; and make such books and vehicles available for police inspection. 482 U.S. at 704-05 & n.15. Vehicle dismantlers were subjected to criminal penalties, license revocation,

and civil fines for any failure to comply. *Id.* at 705. These few attributes sufficed to put the owner on notice "that his property will be subject to periodic inspections undertaken for specific purposes." *Id.* at 705 n.16 (quoting *Dewey*, 452 U.S. at 600).

The regulatory regime for hotels shares those same attributes—and more: Section 41.49 similarly requires hotel owners to record certain information and make the required records available for police inspection. Hotels, too, are licensed—in fact subject to licensing from multiple agencies: A hotel owner may not "engage in the business of a hotel" in Los Angeles, unless he obtains an operational permit from the Fire Marshall. LAMC § 57.105.6.17. He also must register the hotel with the Director of Finance and obtain a "Transient Occupancy Registration Certificate." *Id.* § 21.7.6. That Registration Certificate, too, must be posted in a conspicuous place on hotel premises at all times. *Id.* Violating § 41.49, too, carries penalties. And, most important of all, as in *Burger*, § 41.49 itself informs a hotel owner that the required records "will be subject to periodic inspections undertaken for specific purposes." 482 U.S. at 705 n.16 (quoting *Dewey*, 452 U.S. at 600).

Burger observed that both the "number of regulations" and longevity of the regulatory scheme are relevant, though neither is dispositive. 482 U.S. at 705 & n.16 (citing *Dewey*, 452 U.S. at 600). It had to make those points in order to sustain the scheme there, because the regulations were so few (the ones mentioned above) and so new (the inspection provision was only four years old when the statute was

challenged).[1] *Burger* also found it instructive that other states provided for the warrantless inspections of vehicle dismantlers and junkyards. 482 U.S. at 698 n.11, 705.

Los Angeles hotels are subject to far more, and far older, regulations than the vehicle dismantlers in *Burger*. No wonder Plaintiffs conceded that "[t]here does seem to be a pervasive scheme throughout the state statutes regulating the various aspects of the motel industry." J.A. 133.

To start with the extent of the regulation, Los Angeles hotels labor under numerous other state and local regulatory burdens. Some examples suffice:

- A hotel operator may not refuse a guest without just cause. Cal. Penal Code § 365.
- If a guest fails to depart his hotel room by checkout time, a hotel cannot evict the guest without satisfying certain conditions. Cal. Civ. Code § 1865.
- Bed linens must be changed before a new guest occupies the bed. Cal. Code Regs. tit. 25, § 40.
- Hotels must provide guests the option of not having towels and linens laundered daily. LAMC § 121.08(A)(12).

---

[1] This Court boosted that limited history by linking it to the 140-year history of regulation of the automobile junkyard's cousins, the second-hand shop and the general junkyard. *Burger*, 482 U.S. at 707.

- Hotels may not provide multi-use cups and ice buckets unless they are thoroughly washed and sanitized after each use and then placed in a protective bag. Single-use cups and ice buckets must be individually wrapped. Cal. Code Regs. tit. 17, § 30852 *et seq.* (authorizing health officials to inspect for compliance).

- Hotels must conspicuously post room rates and may not charge more than the posted rate. Cal. Civ. Code § 1863.

As to duration, for 115 years, Los Angeles has continuously required hotels to record the same types of information about their guests, and to make the registers available for police inspection. *See* Penal Ordinances §§ 995, 997 (1899). And for 106 of those years, hotels were required to leave the registers "open to inspection by … guests." *Id.* § 997.

In regulating hotels so pervasively, Los Angeles joins a centuries-old tradition. Innkeepers were "tightly regulated" under "fourteenth-century English statutes and case law." Frederick B. Jonassen, *The Law and the Host of the Canterbury Tales*, 43 J. Marshall L. Rev. 51, 53 (2009). The colonies and nascent states continued the regulatory tradition. Three examples illustrate.

Colonial Virginia required innkeepers to obtain a license and regulated their rates, prohibiting them, for example, from charging more than "tenn pounds of tobaccoe for a meales diett." Act VIII of Oct. 1, 1644, *reprinted in* 1 William Waller Hening, *The*

Statutes at Large, Being a Collection of All the Laws of Virginia 287 (2d ed. 1823).[2]

Massachusetts capped the number of inns that could operate, tasking a town selectman in each town with certifying that town's quota. An Act For The Due Regulation Of Licenced Houses (1786), *reprinted in* Acts and Laws of the Commonwealth of Massachusetts 208-09 (1893). And no innkeeper could secure a license without swearing an oath of loyalty to the Commonwealth. *Id.* at 208. Massachusetts also required innkeepers to "furnish[] … suitable provisions and lodging, for the refreshment and entertainment of strangers and travellers, pasturing and stable room, hay and provender … for their horses and cattle." *Id.* at 209.

In 1710, Pennsylvania passed an Act "that no public house or inn … be kept without license." Acts of the General Assembly of Pennsylvania, *reprinted in* 1 Mathew Carey & J. Bioren, *Laws of the Commonwealth of Pennsylvania* 79 (1803). Innkeepers could not secure a license without persuading county and city officials to recommend them to the Lieutenant Governor. *Id.* at 80. They were also required to "keep good entertainment for man and horse"—for example, sufficient food. *Id.* at 81. Similarly, New Jersey's 1797 Act Concerning Inns and Taverns for-

[2] Georgia similarly directed the "justices of every inferior county court" responsible for innkeeper licensing to fix rates for "liquors, diet, lodgings, provender, stabling and pasturage" and required innkeepers to post the price list. An Act for Regulating Taverns, and Reducing Rates of Tavern License No. 459 (1791), *reprinted in* Robert Watkins & George Watkins, *Digest of the Laws of the State of Georgia* 453-54 (1800).

bade innkeepers to keep disorderly inns or to allow gaming. Act Concerning Inns and Taverns, N.J. Laws Pat. 235 (1797), *reprinted in Laws of the State of New Jersey* 281-82, (1821). It also required them to "use and maintain good order and rule, and find and provide good, wholesome, and sufficient lodging." *Id.* at 282. For good measure, innkeepers were required to have "at least two good feather-beds for guests, with good and sufficient bed-clothes for the same." *Id.* at 283.

The close regulation of hotels—the inns of the modern world—continues to this day (though with less talk about hay and stables). Courts have consistently upheld these regulations because "the keeping of [hotels] is a business so far affecting the public interest," that legislatures may act to ensure "that such houses do not become places for the practice of vice or crime or menaces to the public welfare," *Cutsinger v. Atlanta*, 142 Ga. 555, 565 (1914)—exactly the City Council's purpose here.

c. *Burger* noted that other states also provided for the warrantless inspections of vehicle dismantlers and automobile junkyards. 482 U.S. at 698 n.11, 705. Ordinances like the one at issue here are just as pervasive. We have found more than 100 ordinances and statutes that require hotels to record information about their guests and make the required records available for police inspection.[3]

---

[3] *See* P.A. 66-107 (citing 70 laws); *see also* Anaheim, Cal., Code § 7.22.010; Bellevue, Wash., Code § 5.24.010 *et seq.*; Billings, Mont., Code § 7-602; Detroit, Mich., Code § 44-2-12; East Peoria, Ill., Code § 3-15-13; Greensboro, N.C., Code § 13-91; Jersey City, N.J., Code § 254-96; Los Angeles Cnty, Cal.,

2. Section 41.49 meets *Burger*'s other three criteria.

Beyond the requirement that a business be closely regulated, § 41.49 also meets *Burger*'s three additional criteria.

a. Section 41.49 easily meets the first condition: "a substantial government interest that informs the regulatory scheme pursuant to which the inspection is made." *Id.* at 702 (internal quotation marks omitted). The City Council's stated objective was to "discourage the use of hotel and motel rooms for illegal activities, particularly prostitution and narcotics offenses." L.A., Cal., Ordinance 177966 (Oct. 6, 2006). The Ninth Circuit accepted that § 41.49's goal was to "deter drug dealing and prostitution" in hotels. P.A. 10. That is indisputably a substantial interest.

b. The next requirement is that § 41.49's warrantless register inspections must be "necessary to further [the] regulatory scheme." *Burger*, 482 U.S. at 710 (alteration in original). Plaintiffs concede that the City may require them to collect the infor-

---

Code § 8.20.010 *et seq.*; Madison, Wis., Code § 23.12; Missoula, Mont., Mun. Code § 5-16-050; Montgomery, Ala., Code § 6-62; N.H. Rev. Stat. Ann. § 353:3; Norfolk, Va., Code § 22-7; Rockford, Ill., Code § 105-436; Sacramento, Cal., Code § 5.76.010 *et seq.*; Spokane, Wash., Mun. Code § 17C.315.150; Stockton, Cal. Mun. Code § 5.44.010 *et seq.*; Tucson, Ariz., Code § 7-441; Tulsa, Okla., Code § 27:1602 *et seq.*; Virginia Beach, Va., Code § 15-5; Wis. Admin. Code DHS § 195.16; Woodbridge, N.J., Revised Gen. Ordinances § 21-1.1 *et seq.* Note that upon close scrutiny the appendix cited above should not have including ordinances for Elizabeth, N.J.; Emeryville and Santa Cruz, Cal.; Hampton, Va.; and Mesa, Ariz.

mation listed in § 41.49. They also agree that they keep these records for the City's benefit. Section 41.49 contemplates no physical intrusion into private places. As the Ninth Circuit pointed out, the only physical intrusion is into the "hotel's papers." P.A. 6.

The City Council concluded that this very limited warrantless record inspection is necessary to further the City's interest in assuring that its hotels do not become havens for crime. Through a century of experience, the Los Angeles City Council—along with the legislatures of scores of states and municipalities—has confirmed that a warrantless inspection scheme of hotel registers is necessary to "discourag[e] the use of hotel and motel rooms for illegal activities, particularly prostitution and narcotics offenses." L.A., Cal., Ordinance 177966 (Oct. 6, 2006). The City Council found that "requiring certain minimum information to be maintained in hotel and motel registers and inspection of hotel and motel registers by the police department is a significant factor in reducing crime in motels and hotels." *Id.* Recognizing that criminals prefer to remain anonymous, the Council concluded that requiring hotels to record and maintain basic information about their guests, and make that information available for police inspection, deters criminal activity in hotels. *Id.*

The only evidence in the record proves that § 41.49 does, indeed, accomplish its goal. Los Angeles Police Department Det. Eric Moore, a nuisance abatement expert and the officer-in-charge of enforcing § 41.49, explained: "Prostitutes and/or criminals are reluctant to provide true identifying information," and are also reluctant to "falsify such in-

formation"—preferring to leave the required registration cards incomplete. J.A. 116. Thus, requiring hotel owners to record § 41.49 information "furthers the City's goal in eradicating prostitution and/or other criminal activities at motels." *Id.*; *see also* P.A. 120-33 (showing 82% increase in criminal activity at a sample of five motels between the six months before § 41.49's suspension and the six months after).

Common sense supports the rationale. Take the example of a parking-meter motel. A dealer, pimp, or john who is required to show ID before renting a room, and watches the clerk record the information for purposes of police inspection, might rethink the risk-reward analysis of using the motel. But the goal of deterring criminal activity is scuttled if the motel does not consistently demand and truthfully record all the required information.

The only way to ensure that our hypothetical parking-meter motel is doing so is to set up a system of frequent, unannounced inspections. If the motel operator knows that an officer can walk in at any moment, inspect the register, and subject him to a criminal prosecution for a violation, he is more likely to comply with the law. When a police officer makes an unannounced register check, she can verify the accuracy of the information by scribbling down the license plates of the cars in the parking lot and then verifying that they match the register information. Even if no officer actually checks the register, the possibility of an unscheduled register inspection makes hotel operators more likely to fulfill their responsibilities. On the other hand, if the police are not permitted to conduct frequent surprise spot checks for record compliance, it is easy for the hotel

operator to get away with omitting names or otherwise cooking the books.

This is the same basis on which this Court has approved warrantless inspections in multiple cases. In *Burger*, for example, this Court found that "a warrant requirement would interfere with the statute's purpose of deterring automobile theft." 482 U.S. at 710. "[F]requent and unannounced inspections are necessary … if the regulatory scheme aimed at remedying this major social problem is to function at all." *Id.* (internal quotation marks omitted).

This Court took the same approach in *United States v. Biswell*, 406 U.S. 311 (1972), where it approved the scheme under the Gun Control Act of 1968. That statute required all licensed gun dealers to maintain certain records and allow law enforcement agents to descend on their premises—not just to review their records but also to scour their store rooms and warehouses to examine any firearms kept on premises—all without a warrant and without notice. 406 U.S. at 312 n.1. The Court held that inspections could not "assure[] that weapons are distributed through regular channels and in a traceable manner and make[] possible the prevention of sales to undesirable customers and the detection of the origin of particular firearms," if scheduled in advance or conducted only with warrants. *Id.* at 315-16. The Court explained that "the prerequisite of a warrant could easily frustrate inspection." *Id.* at 316; *see also Dewey*, 452 U.S. at 603 (endorsing Congress's determination that "[i]n [light] of the notorious ease with which many safety or health hazards may be concealed if advance warning of inspection is

obtained, a warrant requirement would seriously undercut this Act's objectives"). These cases all stand for the proposition that a warrantless inspection scheme is most essential in cases, like this one, that pose a "high risk of undetectable subterfuge." Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 10.1(c) n.69 (5th ed. 2012).

All the alternatives the Ninth Circuit contemplated would defeat the City's purpose. The Ninth Circuit believed that "pre-compliance judicial review" is an "essential procedural safeguard." P.A. 12. Notably, none of the *Burger* criteria contemplates "pre-compliance judicial review," much less makes it "essential"; that was a requirement the court imported from the context of administrative subpoenas, *see Donovan v. Lone Steer, Inc.,* 464 U.S. 408, 414 (1984), which neither party invoked. But § 41.49 does not authorize administrative subpoenas. An administrative subpoena scheme would simply not work in this context because, by definition, such a subpoena would give hotel owners notice and ample time to submit a set of falsified records. It would be a worthless, futile effort to serve the parking-meter motel with an administrative subpoena to produce a month's worth of register information. The owner could scribble down 29 days of false entries and tack on one set of truthful entries for submission day itself, safe in the knowledge that the police could not learn that days one through 29 were false because they could not go back in time to compare the register to cars parked in the lot.

All the more so if the owner challenged the subpoena in court. *See Lone Steer*, 464 U.S. at 415; LaFave, *supra*, § 10.1(d). In that case, the owner

could falsify records for the months or perhaps years it took for the case to wind its way through the court system. Because the register can only be verified contemporaneously, and because violations can be readily concealed without being corrected, the police would be none the wiser.

Similarly, as this Court recognized in *Burger* and *Biswell*, a warrant requirement is misaligned with § 41.49's objectives. In a criminal investigation, a warrant assures that there is probable cause to believe "that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). But these inspections are not premised on probable cause that a crime *has* been committed, but on the need to ensure the required records are being properly maintained. So "the protections afforded by a warrant would be negligible." *Burger,* 482 U.S. at 710 (quoting *Biswell*, 406 U.S. at 316)).

This case—and cases like *Burger*, *Biswell*, and *Dewey*—stand in contrast to situations where this Court has found that warrantless inspections were not necessary to carry out the law enforcement purposes. A good example is *See v. City of Seattle*, 387 U.S. 541 (1967). There, this Court disapproved the Seattle Fire Chief's warrantless search of a locked commercial building to "obtain compliance with Seattle's Fire Code." *Id.* at 541. As this Court later observed, that holding was premised on the fact that the "mission of the inspection system was to discover and correct violations of the building code, conditions that were relatively difficult to conceal or to correct in a short time." *Biswell*, 406 U.S. at 316. Therefore, "[p]eriodic inspection sufficed, and inspection

warrants could be required and privacy given a measure of protection with little if any threat to the effectiveness" of the system. *Id.*

This makes perfect sense. It is hard to hide a half ton of garbage sitting on your property, or an emergency door that won't open, or a construction defect that violates code. In fact, most building code violations and fire hazards "cannot readily be concealed without being corrected." Note, *The Fourth Amendment and Housing Inspections*, 77 Yale L.J. 521, 534 (1968). Therefore, if a property owner takes advantage of the time before an announced inspection to correct deficiencies—*e.g.,* to remove the debris or fix the jammed door—the "purposes of the housing code" are actually "advanced rather than thwarted." *Id.*; *see also* LaFave, *supra*, at §§ 10.1(c), 10.1(e). This is presumably why in *Camara v. Municipal Court*, which considered a warrantless inspection of a private dwelling pursuant to the San Francisco Housing code, this Court stated that no party "urged that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement," and why the Court concluded that the "burden of obtaining a warrant" was not "likely to frustrate the governmental purpose behind the search." 387 U.S. 523, 533 (1967).

c. To qualify as an adequate substitute for a warrant both in terms of "certainty" and "regularity" of application, a regulation "must perform the two basic functions of a warrant": advise the owner that the inspection is being made pursuant to law, and be "carefully limited in time, place, and scope." *Burger*,

482 U.S. at 702-03. Section 41.49 meets both requirements.

Section 41.49 advises hotel owners that the required record inspections are made pursuant to law. In *Burger*, this Court concluded that the statute itself advised vehicle inspectors that inspections were being made pursuant to law because the statute so provided. 482 U.S. at 711. In fact, the Court held that the statute informed the vehicle dismantler "that the inspections to which he is subject do not constitute discretionary acts by a government official but are conducted pursuant to statute," *id.*, even though the statute did not actually spell out how frequently inspections were to occur or how businesses were to be selected for inspection, *id.* at 711 n. 21; *see Biswell*, 406 U.S. at 313 n.1, 316 (statute that did not specify how inspections would be conducted or how individual gun dealers would be chosen for inspection, and permitted inspections of a gun dealer's records and inventory "at all reasonable times," adequately advised dealers that inspections were made pursuant to law).

So, too, here. Section 41.49 explicitly requires hotel owners to maintain certain records and to make the required records "available to any officer of the Los Angeles Police Department for inspection." LAMC § 41.49. Section 41.49 itself, like its predecessors have continuously done since 1899, thus informs the hotel owner that inspections of the required records are made pursuant to law.

Contrast § 41.49's narrow and defined inspection with the nearly limitless local ordinance in *Camara*, which permitted "[a]uthorized employees of the City

departments or City agencies" to enter "any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code." 387 U.S. at 526. There, unlike here, "when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization." *Id*. at 532.

Section § 41.49 is also sufficiently limited in time, place, and scope. As to "scope" and "place," § 41.49 is narrower than any of the statutes this Court has approved. The only item police officers are permitted to inspect is a register—a single bound book, stack of cards, or electronic document. This very limited scope minimizes almost all interference with the hotel's operation. Moreover, the records are not just anywhere in the hotel. The records must be maintained in the "guest check-in area or in an office adjacent to that area." LAMC § 41.49(3)(a). It is thus entirely up to the hotel operator where the officer reviews the register.

This is significantly more limited than the scope and place of permitted inspections in *Burger*, *Biswell*, and *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970). The Court in *Burger* approved inspections covering not only the required records, but all of the vehicles and vehicle parts found on the premises. 482 U.S. at 711-12. Similarly, the statutes in *Biswell* and *Colonnade* permitted inspections not only of records, but also of entire premises, including locked "places of storage."

Biswell, 406 U.S. at 313 n.1; *see Colonnade,* 397 U.S. at 74 n.1.

The narrow scope and place of inspections authorized by § 41.49 stands in marked contrast to OSHA's wide-ranging and expansive inspections in *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978). OSHA authorized the Secretary of Labor "to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee … and (2) to inspect and investigate … any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee." *Id.* at 309 n.1. Moreover, the statute "fail[ed] to tailor the scope … of such administrative inspections to the particular health and safety concerns posed by the numerous and varied businesses regulated by the statute." *Dewey*, 452 U.S. at 601.

The time of the inspections is likewise sufficiently cabined by the ordinance. *Burger* held that the New York statute was limited in time because it required a vehicle dismantler to permit inspection only "during [his] regular and usual business hours." 482 U.S. at 711. But limiting required records inspections only to the regular and usual business hours of a hotel would impose no limit at all, as hotels are open 24/7. Instead, § 41.49 requires "[w]henever possible" the inspection be "at a time … that minimizes any interference with the operation of the business." § 41.49(3)(a). A reasonable officer

would not, for example, choose to examine the records during prime checkout time.

* * *

Thus, this case meets all of the *Burger* criteria: And the same logic that allowed warrantless inspections in *Burger*, is fully applicable here.

B. Searches Conducted Under § 41.49 Are Reasonable.

Even if the established exception to the warrant requirement for administrative inspections in closely regulated industries did not fit § 41.49 perfectly, the searches conducted pursuant to § 41.49 must be sustained because they are reasonable. In determining if a particular search is reasonable, this Court first looks to "precise guidance from the founding era." *Riley*, 134 S. Ct. at 2484. Absent such guidance, the Court weighs the degree to which the search "intrudes upon an individual's privacy," against the degree to which the search is "needed for the promotion of legitimate governmental interests." *Id.* (citation omitted); *see King*, 133 S. Ct. at 1969 (warrantless searches can be reasonable under the Fourth Amendment in a variety of circumstances, including where "faced with … diminished expectations of privacy, minimal intrusions, or the like").

The Ninth Circuit acknowledged that this reasonableness balancing is "[o]rdinarily" required. P.A. 9. But it declined to perform the requisite balancing, reasoning that "that balance has already been struck" because "the Supreme Court has made clear that, to be reasonable, an administrative rec-

ord-inspection scheme … must at a minimum afford an opportunity for pre-compliance judicial review." P.A. 9-10.

The Ninth Circuit was incorrect. That element relates to the exception to the warrant requirement the court was analyzing. But finding that the exception did not apply does not obviate the reasonableness balancing. That is because, as the dissent explained, "[t]he absence of judicial review establishes only that the ordinance might not qualify for the recognized exception for administrative subpoenas"; however, "[t]hat is not the only exception to the warrant requirement recognized under the Fourth Amendment, let alone the only basis for upholding a warrantless search on the ground that it was not unreasonable." P.A. 27-28. For example, "[i]n some circumstances, such as '[w]hen faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Court has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable.'" *King*, 133 S. Ct. at 1969.

Under the proper framework, § 41.49 is constitutional because warrantless inspections of inns were commonplace at the Founding, and because the hypothesized application of § 41.49 represents a reasonable balance between the City's compelling objectives and the very limited intrusion on the hotel's privacy interests.

1. Warrantless inspections of inns were permissible during the Founding era.

This Court first looks to the existence of a "clear practice, either approving or disapproving the type of search at issue, at the time the constitutional provision was enacted." *Vernonia Sch. Dist. 47J*, 515 U.S. at 652. We have already demonstrated (at 34-36) that inns were heavily regulated at the Founding. But warrantless searches of inns were common during the Founding era. For example, in 1786, Massachusetts required Tythingmen to "carefully inspect all licensed Houses, and to inform of all disorders or misdemeanors which they shall discover or know to be committed in them." Act For The Due Regulation of Licensed Houses, 1786 Mass. Acts Ch. 68 at 206 (1786). In 1791, New Hampshire enacted a similar law "that it shall be the duty of the selectmen carefully to inspect all licensed houses, and in no case to license persons that keep disorderly houses." Power and Duty of Selectmen, N.H. Laws (1791), *reprinted in Complete Justice of the Peace, Containing Extracts from Burn's Justice, and Other Justiciary Productions* 292 (1806). These statutes reflected the common law notion that "a keeper of an inn is in the exercise of a quasi public employment. The law gives him special privileges and he is charged with certain duties and responsibilities to the public." *The Civil Rights Cases*, 109 U.S. 3, 41 (1883) (Harlan, J., dissenting) (emphasis omitted).

Such inspections were evidently accepted at the Founding. *Cf.* William J. Cuddihy, *The Fourth Amendment Origins and Original Meaning 602-1791,* 743 (2009) (noting that several states "main-

tained warrantless inspections of breweries, bakeries, and other kinds of workplaces even as their legislatures were debating the [Fourth] [A]mendment"); *Weiss v. Herlihy*, 23 A.D. 608, 613 (N.Y. 1897) (in an action for trespass seeking to enjoin a police officer from establishing a permanent presence in plaintiff's restaurant to inspect premises for gambling violations, refusing to issue the injunction because the law "authorized [the police] to observe carefully and inspect all places of business having excise or other licenses").

Searches conducted under § 41.49 are, therefore, reasonable for that reason alone.

2. The City's compelling interest in deterring crime in hotels justifies any minimal infringement of a hotel's privacy.

We have already discussed in detail (at 37-43), § 41.49's crucial role in deterring prostitutes, human traffickers, drug dealers and other criminals from setting up shop in hotels. Those interests outweigh whatever claimed expectation of privacy a hotel might have in its register.

Assessment of the intrusion upon individual privacy affected by a search, involves both "the nature of the privacy interest" and the relative obtrusiveness or unobtrusiveness of the search. *Vernonia Sch. Dist. 47J*, 515 U.S. at 654. By either metric, searches under § 41.49 have a minimal effect on privacy interests.

a. The Ninth Circuit concluded that Plaintiffs have a reasonable expectation of privacy in the registers because "businesses do not ordinarily disclose, and are not expected to disclose, the kind of commercially sensitive information contained in the records—*e.g.,* customer lists, pricing practices, and occupancy rates." P.A. 7. There is no evidence in the record from which to assess the validity of that statement as to businesses generally. But what is evident from this record—and in particular, the history of § 41.49—is that the statement is wrong with respect to hotels.

Hotels have a diminished privacy interest in their guest registers. For a long time, owners left their registers open to widespread inspection to a point where guests considered reading the hotel register to be "one of America's most popular indoor sports." Williamson, *supra*, at 190, 181. Guests entered not only their names and addresses, but commentary to entertain future readers. A scan of the register from the Cataract House, in Niagara Falls, reveals one Sally Wiggins, who arrived from Boston "very much fatigued, took a little wine, [and] felt better" in 1828. *Id.* at 185. At the Ball's Hotel in Brownsville, Pennsylvania, a register was kept "after the usual fashion in this country," in which all guests were expected to enter "their names, their town of residence, and their places of destination." In a column for "remarks," visitors tallied their votes for President: "Harrison against the world—Van Buren for ever—Henry Clay, the Pride of Kentucky." *Id.* at 188. During that era, a hotel simply had no expectation of privacy in the "center of hotel social life," whose daily viewing was one of the "common

people's inalienable rights." Harrison Rhodes, *American Towns and People* 178 (1920).

As already discussed (at 4-6), that was the case in Los Angeles all the way from 1899 through 2006, when hotel owners were legally required to keep their guest registers "open to inspection by the lodgers, roomers or guests" of the hotel. L.A. Penal Ordinances § 995 (1899). It is still true in Alameda County, California, where the register "shall at all times be open to public inspection." P.A. 68. Even with that requirement gone, any expectation of privacy in records that a hotel owner has been required to maintain for police inspection since 1899 is at least diminished.

Furthermore, as the Ninth Circuit panel correctly concluded, "[t]he information covered by the Los Angeles ordinance … does not, on its face, appear confidential or 'private' from the perspective of the hotel operator." P.A. 40. A register of guests' names, addresses, and license plate numbers is not highly personal information *about the hotel*. It is not information concerning "familial, political, professional, religious, and sexual associations" of the hotel. *United States v. Jones*, 132 S. Ct. 945, 955 (2012) (Sotomayor, J. concurring) (citation omitted). And it does not allow the government to get to know a hotel's "doctors, lawyers, creditors, political allies, social connections, religious affiliation, educational interests, the papers and magazines he reads, and so on ad infinitum." *Cal. Bankers Ass'n v. Shultz*, 416 U.S. 21, 85 (1974) (Douglas, J., dissenting). Similarly, hotel "pricing practices" are certainly not private, as Los Angeles hotels are required to post their room

rates in a conspicuous place. *See* Cal. Civ. Code § 1863.

This Court did not believe that a bank had a privacy interest in similar information in *California Bankers Association*, a challenge to the Bank Secrecy Act. Implementing regulations of the Act required banks to report domestic financial transactions greater than $10,000, along with the name, address and social security number of the person conducting the transaction and a summary of the nature of the transaction. *Id.* at 39 & n.15. Banks challenged the regulation as violating their Fourth Amendment rights. This Court had "no difficulty" concluding that the reporting requirements "abridge[d] no Fourth Amendment right of the banks themselves." *Id.* at 66. The Court simply held that the required information "is sufficiently described and limited in nature," and sufficiently related to the government purpose, "so as to withstand the Fourth Amendment challenge made by the bank plaintiffs." *Id.* at 67. If a bank does not have a substantial expectation of privacy in the names and social security numbers of its customers—at least when it comes to turning those materials over to the police (as opposed to a competitor)—then a hotel's expectation of privacy, if any, would be even lower with respect to less valuable and personal information.[4]

---

[4] Although the "relative unobtrusiveness of the search," *Vernonia Sch. Dist. 46J*, 515 U.S. at 664, discussed *infra*, may be different where the required records must be reported to the government versus maintained for police inspection, the business owner's *privacy interest* in the information contained therein is not.

b. The record inspections contemplated by § 41.49 are also particularly unobtrusive: The police need never step foot into private areas, are authorized to look only at the register itself, and do nothing but look at pages of a book (or cards or a computer spreadsheet) with no danger of the search leeching outside those records. Thus, this case is unlike the precedents in which this Court disapproved warrantless searches of "locked commercial warehouse[s]" or "portions of commercial premises which are not open to the public." *See*, 387 U.S. at 541, 545; *Marshall*, 436 U.S. at 310 ("nonpublic area of the business").

C. There Are Substantial Applications of § 41.49 That Are Constitutional.

The previous section addresses only the application of § 41.49 that the Ninth Circuit hypothesized. But that is not how a facial challenge works. This Court cannot strike a statute on its face unless "no set of circumstances exists under which the Act would be valid." *Salerno*, 481 U.S. at 745. This Court could affirm simply by concluding that some of the other scenarios discussed above (at 19-20) are constitutional, without even addressing the constitutionality of the Ninth Circuit's hypothetical.

Some would be less intrusive physically *(e.g.,* scenarios 1 and 2), others would be less invasive of any possible privacy interests (*e.g.,* scenarios 1 and 3), and in others the inspection is plainly justified and § 41.49 is invoked merely to require cooperation (scenarios 4 and 5). All of them would affect one or more factors of the reasonableness balancing. Consider, for example, the hotels (described in scenario 1) that continue to keep their registers the way they

were legally required to be kept from 1899 until eight years ago: "open to inspection by the lodgers, roomers or guests" of the hotel. LAMC § 47.01. Any minimal expectation of privacy that these hotels might claim in such records would dwindle, if not evaporate entirely.

There is not enough room in this brief to address the ramifications of all the other scenarios, and "such important constitutional questions should not rise and fall on the vagaries of judicial imaginations." P.A. 18.

CONCLUSION

This Court should reverse the judgment of the court of appeals.

Respectfully submitted,

E. Joshua Rosenkranz
Robert M. Loeb
Rachel Wainer Apter
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019

Orin S. Kerr
2000 H Street, NW
Washington, DC 20052

Michael N. Feuer
City Attorney
James P. Clark
Chief Deputy City Attorney
Thomas H. Peters
Chief Assistant City Attorney
Gregory P. Orland*
Senior Counsel
700 City Hall East
200 North Main Street
Los Angeles, CA 90012
(213) 978-8160
gregory.orland@lacity.org

**Counsel of Record*

Counsel for Petitioner

Date: December 15, 2014

STATUTORY ADDENDUM

TABLE OF CONTENTS

Page

L.A., Cal., Mun. Code § 41.49 (2008) (Current Version) ..... SA 1

L.A., Cal., Ordinance 177966 (Oct. 6, 2006) ..... SA 8

L.A., Cal., Mun. Code § 41.49 (1964) ..... SA 19

L.A., Cal., Mun. Code § 47.01 (1936) ..... SA 20

L.A., Cal., Penal Ordinances §§ 995-997 (1899) ..... SA 21

L.A., Cal., Mun. Code § 11.00 (2004) (Current Version) ..... SA 23

L.A., Cal., Mun. Code § 11.00(m) (1936) ..... SA 29

L.A., Cal., Mun. Code § 41.49 (2008)
(Current Version)

(Amended by Ord. No. 179,533, Eff. 3/8/08.)

1. **Definitions**. For purposes of this section:

Guest means a person who exercises occupancy or is entitled to occupancy in a hotel by reason of concession, permit, right of access, license or other agreement.

Hotel means any public or private space or structure, including but not limited to, any inn, hostelry, tourist home, motel, lodging house or motel rooming house offering space for sleeping or overnight accommodations in exchange for rent and for a period of less than 30 days. Hotel includes the parking lot and other common areas of the hotel. Hotel does not include living accommodations provided at any governmental or nonprofit institution in connection with the functions of that institution.

Housing Voucher means a voucher, certificate or coupon for lodging issued individually or jointly by any of the following, or an agency or authority of any one or more of the following: (1) the federal government; (2) the State of California or another state; (3) a county; (4) a municipality; or (5) a non-profit entity that issues vouchers, certificates or coupons for lodging to homeless individuals or families.

Identification document means a document that contains the name, date of birth, description and picture of a person, issued by the federal

government, the State of California, another state, a county or municipal government subdivision or one of their agencies, including but not limited to: a motor vehicle operator's license, an identification card, or an identification card issued to a member of the Armed Forces. Identification document also includes a passport issued by a foreign government or a consular identification card, issued by a foreign government to any of its citizens and nationals, which has been approved by the City of Los Angeles as valid identification.

Occupancy means the use or possession, or the right to the use or possession, of any room in any hotel.

Operator means the person who is either the proprietor of the hotel or any other person who has the right to rent rooms within the hotel, whether in the capacity of owner, manager, lessee, mortgagee in possession, licensee, employee or in any other capacity.

Record means written documentation of information about a guest. A record may be maintained electronically, in a book or on cards.

Rent means the consideration charged, whether or not received, for the occupancy of a room in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature.

Reservation means a request to hold a room for a potential guest that includes the following information and is documented in writing: (i) The

potential guest's name and contact information; and (ii) the date and time when the contact was made.

Room means any portion of a hotel, which is designed or intended for occupancy by a person for temporary lodging or sleeping purposes.

Walk-in guest means any guest who did not make a reservation for a room prior to the time that he or she seeks to check in at the hotel

2. **Hotel Record Information.**

(a) Every operator of a hotel shall keep a record in which the following information shall be entered legibly, either in electronic, ink or typewritten form prior to the room being furnished or rented to a guest:

(1) As provided by the guest in response to an inquiry or by other means:

(i) The name and address of each guest and the total number of guests;

(ii) The make, type and license number of the guest's vehicle if the vehicle will be parked on hotel premises that are under the control of the Operator or hotel management;

(iii) Identification information as required by Subsection 4 (a) and (b) of this section.

(2) The day, month, year and time of arrival of each guest;

(3) The number or other identifying symbol of location of the room rented or assigned each guest;

(4) The date that each guest is scheduled to depart;

(5) The rate charged and amount collected for rental of the room assigned to each guest;

(6) The method of payment for the room; and

(7) The full name of the person checking in the guest.

(b) For a guest checking in via an electronic registration kiosk at the hotel, instead of the information required by Subsection 2.(a), the hotel shall maintain the name, reservation information and credit card information provided by the guest, as well as the identifying symbol of the kiosk where the guest checked in and the room number assigned to the guest.

3. **Maintenance of Hotel Record**. Every operator of a hotel shall comply with the following requirements for maintaining the hotel record.

(a) The record shall be kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. The record shall be maintained at that location on the hotel premises for a period of 90 days from and after the date of the last entry in the record and shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the

inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

(b) No person shall alter, deface or erase the record so as to make the information recorded in it illegible or unintelligible, or hinder, obstruct or interfere with any inspection of the record under this section.

(c) Any record maintained in the form of a book shall be permanently bound, each page shall be sequentially numbered and the book shall be the minimum size of eight by ten inches. No page shall be removed from the book. Any record maintained in the form of cards shall be on cards that are the minimum size of two and one-half inches by four inches and numbered consecutively and used in sequence. Any card numbered within the sequence of utilized cards shall be preserved as part of the record even if it is not used for a room rental. The numbers shall be printed or otherwise indelibly affixed to the cards. If maintained electronically, the record shall be printable.

(d) Nothing in this section absolves the operator from maintaining the record for longer than 90 days in order to comply with any other provision of law, including the obligation to maintain and produce records for the purpose of paying a transient occupancy tax.

4. **Renting of Hotel Rooms**. The operator of a hotel shall not rent a room except in compliance with the following conditions.

(a) A guest who pays all or part of the rent for a room in cash at the time of checking in, and a walk-in guest, shall be required to present an identification document or a housing voucher at the time of checking into the hotel.

(b) A room shall not be rented hourly or for fewer than 12 hours unless an identification document is obtained from the guest when he or she checks into the hotel.

(c) The number and expiration date of the identification document obtained under Subsections 4.(a) or (b) shall be recorded and maintained by the operator in the record for at least 90 days or if the guest is paying with a housing voucher obtained under Subsection 4.(a), a copy of the housing voucher shall be maintained with the record for at least 90 days.

5. **Training of employees.** The owner or proprietor of a hotel business shall take all reasonable steps, including but not limited to, providing training regarding this section to ensure that the person who checks a person into the hotel complies with the provisions of this section. A person who has not been trained shall not be assigned to check persons into the hotel.

6. **Guest obligations**.

(a) No person shall give any assumed, false or fictitious name, or any other name other than his or her true name when checking into a hotel.

(b) No person shall present to any hotel identification that is any way false, altered or counterfeit or belongs to another person.

(c) Subsection 6. shall not apply to law enforcement personnel engaged in an investigation.

L.A., Cal., Ordinance 177966 (Oct. 6, 2006)

ORDINANCE No. 177966

WHEREAS, some hotels and motels are responsible for a disproportionate share of police resources because of repeated calls for service and complaints of crime and this criminal activity is a real and compelling concern to the City of Los Angeles, the residents of the City of Los Angeles as well as visitors to the City of Los Angeles, and the hotel/motel industry itself;

WHEREAS, some hotels and motels offer shelter to parole violators and fugitives and provide bases of operation for criminal enterprises, such as prostitution, manufacturing of forged identity documents and trafficking in illegal narcotics;

WHEREAS, persons who rent rooms for illegal purposes generally pay for their rooms with cash and do not have advance reservations, and therefore requiring such persons to provide identification will preserve the rights of consumers to use hotels and motels for legitimate purposes while discouraging the use of hotel and motel rooms for illegal activities, particularly prostitution and narcotics offenses;

WHEREAS, some motels and hotels rent rooms by the hour and for short periods of time, thereby facilitating and encouraging illegal activity, especially prostitution, and requiring guests who rent rooms hourly or who rent for less than 12 hours to produce identification will discourage illegal activity;

WHEREAS, requiring certain minimum information to be maintained in hotel and motel registers and inspection of hotel and motel registers by the police department is a significant factor in reducing crime in hotels and motels;

WHEREAS, it is imperative that owners and proprietors of hotels and motels train the employees who check persons into these establishments so that the employees can obtain the information required by this ordinance; and

WHEREAS, the Los Angeles Municipal Code currently contains two sections, Sections 41.49 and 47.01, that require the maintenance of registers for hotels and motels and in order to combine hotel/motel registration requirements into one section, Section 47.01 should be repealed,

NOW THEREFORE,

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 41.49 of the Los Angeles Municipal Code is amended to read:

HOTEL REGISTERS AND ROOM RENTALS

1. Definitions. For purposes of this section:

Guest means a person who exercises occupancy or is entitled to occupancy in a hotel by reason of concession, permit, right of access, license or other agreement.

Hotel means any public or private space or structure, including but not limited to, any inn, hostelry, tourist home, motel, lodging house or motel

rooming house offering space for sleeping or overnight accommodations in exchange for rent and a period of less than 30 days. Hotel includes the parking lot and other common areas of the hotel. Hotel does not include living accommodations provided at any governmental or nonprofit institution in connection with the functions of that institution.

Identification document means a document that contains the name, date of birth, description and picture of a person, issued by the federal government, the State of California or another state, or a county or municipal government subdivision or agency, or any of the foregoing, including but not limited to, a motor vehicle operator's license, an identification card, or an identification card issued to a member of the Armed Forces. Identification document also includes a passport issued by a foreign government.

Occupancy means the use or possession, or the right to the use or possession, of any room in any hotel.

Operator means the person who is either the proprietor of the hotel or any other person who has the right to rent rooms within the hotel, whether in the capacity of owner, manager, lessee, mortgagee in possession, licensee, employee or any other capacity.

Record means written documentation of information about a guest. A record may be maintained electronically, in a book or on cards.

Rent means the consideration charged, whether or not received, for the occupancy of a room in a hotel

valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature.

Reservation means a request to hold a room for a potential guest that includes the following information and is documented in writing: (1) The potential guest's name and contact information and (2) the date and time when the contact was made.

Room means any portion of a hotel, which is designed or intended for occupancy by a person for temporary lodging or sleeping purposes.

Walk-in guest means any guest who did not make a reservation for a room prior to the time that he or she seeks to check in at the hotel.

2. Hotel Record Information.

(a) Every operator of a hotel shall keep a record in which the following information shall be entered legibly, either in electronic, ink or typewritten form prior to the room being furnished or rented to a guest:

(1) (i) The name and address of each guest and the total number of guests; (ii) The make, type and license number of the guest's vehicle if the vehicle will be parked on the hotel premises; and (iii) Identification information as required by Subsection 4 (a) and (b) of this section, all of which shall be as provided by the guest in response to an inquiry or by other means.

(2) The day, month, year and time of arrival of each guest.

(3) The number or other identifying symbol of location of the room rented or assigned each guest.

(4) The date that each guest is scheduled to depart.

(5) The rate charged and amount collected for rental of the room assigned to each guest.

(6) The method of payment for the room.

(7) The full name of the person checking in the guest or other identifying symbol if the alternative procedure specified in Subsection 2.A is utilized.

(b) In the event that the hotel utilizes an electronic pre-arrival registration or approval procedure that obviates the requirement for a guest to personally provide information typically required as part of the hotel's customary registration process, the hotel shall not be required to comply with Subsection 4 of this section; provided however, that the hotel's pre-arrival registration or approval procedure must be submitted to and approved by the Board of Police Commissioners, and the hotel must obtain the guest-related information of the type specified in Subsection 4 as the Board of Police Commissioners might reasonably require.

3. Maintenance of Hotel Record. Every operator of a hotel shall comply with the following requirements for maintaining the hotel record.

(a) The record shall be kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. The record shall be maintained at the location on the hotel premises for a period of 90 days from and after the

date of the last entry in the record and shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

(b) No person shall alter, deface or erase the record so as to make the information recorded in it illegible or unintelligible, or hinder, obstruct or interfere with any inspection of the record under this section.

(c) Any record maintained in the form of a book shall be permanently bound, each page shall be sequentially numbered and the book shall be the minimum size of eight by ten inches. No page shall be removed from the book. Any record maintained in the form of cards shall be on cards that are the minimum size of two and one-half inches by four inches and numbered consecutively and used in sequence. Any card numbered within the sequence of utilized cards shall be preserved as part of the record even if it is not used for a room rental. The numbers shall be printed or otherwise indelibly affixed to the cards. If maintained electronically, the record shall be printable.

(d) Nothing in this section absolves the operator from maintaining the record for longer than 90 days in order to comply with any other provision of law, including the obligation to maintain and produce records for the purpose of paying a transient occupancy tax.

4. Renting of hotel rooms. The operator of a hotel shall not rent a room except in compliance with the following conditions.

(a) A guest who pays all or part of the rent for a room in cash at the time of checking in, and a walk-in guest, shall be required to present an identification document at the time of checking into the hotel.

(b) A room shall not be rented hourly or for less than 12 hours unless an identification document is obtained from the guest when he or she checks into the hotel.

(c) The number and expiration date of the identification document obtained under Subsection 4 (a) or (b) shall be recorded and maintained by the operator in the record for at least 90 days.

5. Training of employees.

The owner or proprietor of a hotel business shall take all reasonable steps, including but not limited to, providing training regarding this section to ensure that the person who checks a person into the hotel complies with the provisions of this section. A person who has not been trained shall not be assigned to check persons into the hotel.

6. Guest obligations.

(a) No person shall give any assumed, false or fictitious name, or any other name other than his or her true name when checking into a hotel.

(b) No person shall present to any hotel identification that is any way false, altered or counterfeit or belongs to another person.

(c) Subsection 6 shall not apply to law enforcement personnel engaged in an investigation.

Sec. 2. Los Angeles Municipal Code Section 47.01 is repealed.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of OCT 06 2006.

FRANK MARTINEZ, City Clerk

By /s/
Deputy

Approved 20 OCT 2006

/s/
ACTINGMayor

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By /s/ Asha Greenberg
ASHA GREENBERG
Assistant City Attorney

Date 10/6/06

Rev. 10/6/06

CF 06-0125

DECLARATION OF POSTING ORDINANCE

I, MARIA C. RICO, state as follows: I am, and was at all times hereinafter mentioned, a resident of the State of California, over the age of eighteen years, and a Deputy City Clerk of the City of Los Angeles, California.

Ordinance No. **177966** – **Amending Section 41.49 of the Los Angeles Municipal Code and repealing Section 47.01 of the Los Angeles Municipal Code** – a copy of which is hereto attached, was finally adopted by the Los Angeles City Council on **October 6, 2006,** and under the direction of said City Council and the City Clerk, pursuant to Section 251 of the Charter of the City of Los Angeles and Ordinance No. 172959, on **October 23, 2006** I posted a true copy of said ordinance at each of three public places located in the City of Los Angeles, California, as follows: 1) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; 2) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; 3) one copy on the bulletin board located at the Temple Street entrance to the Hall of Records of the County of Los Angeles.

Copies of said ordinance were posted conspicuously beginning on **October 23, 2006** and will be continuously posted for ten or more days.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this **23rd** day of **October 2006** at Los Angeles, California.

/s/ Maria C. Rico
Maria C. Rico, Deputy City Clerk

Ordinance Effective Date: December 2, 2006
Council File No. 06-0125

Rev. (2/21/06)

L.A., Cal., Mun. Code § 41.49 (1964)

(Added by Ord. No. 127.508, Eff. 6/29/64.)

Every person who owns or operates a motel shall keep a register in which shall be entered:

(a) The name and address of each guest, and the name and address of each member of his party.

(b) In the event that such guest or his party travels by means of motor vehicle, the register shall specify the make, type and license number of the motor vehicle and the year of registration. Said register shall at all times be open for inspection to all police officers.

L.A., Cal., Mun. Code § 47.01 (1936)

(a) Every owner, keeper or proprietor of any lodging house, rooming house or hotel shall keep a register wherein he shall require all guests, roomers or lodgers to inscribe their names upon their procuring lodging or a room or accommodations. Said register shall also show the day of the month and year when said name was inscribed, and the room occupied or to be occupied by said lodger, or roomer or guest in such lodging house, rooming house or hotel. Said register shall be kept in a conspicuous place in said lodging house, rooming house, or hotel, and shall at all times be open to inspection by the lodgers, roomers or guests of said lodging house, rooming house, or hotel, and the Chief of Police or any regular policeman or police detective.

(b) **Hotels—Guests Must Register:** Before furnishing any lodging for hire to any person in any lodging house, or before renting any room to any person in any rooming house, or before furnishing any accommodations to any guest at any hotel, the proprietor, manager or owner thereof, shall require the person to whom such lodgings are furnished, or room is rented, or accommodations furnished, to inscribe his name in such register kept for that purpose as hereinbefore provided, and shall set opposite said name the time when said name was so inscribed, and also the room occupied by such lodger, roomer or guest.

L.A., Cal., Penal Ordinances §§ 995-997 (1899)

LODGING HOUSES AND HOTELS TO KEEP REGISTER.

Ordinance 5760, New Series

[Approved April 28, 1899]

Register to be kept

Section 995. That every owner, keeper or proprietor of any lodging house, rooming house, or hotel in said City of Los Angeles, shall, from and after the adoption of this ordinance, keep a register wherein he shall require all guests, roomers or lodgers to inscribe their names upon their procuring lodging or a room or rooms, or accommodations in such lodging house or rooming house, or hotel.

Contents of register

The said register shall also show the time when said name was inscribed, meaning the day of the month and year, also the room or rooms occupied or to be occupied by said lodger, or roomer or guest in such lodging house, or rooming house or hotel.

Said register shall be kept in a conspicuous place in said lodging house, rooming house or hotel, and shall at all times be open to inspection by the lodgers, roomers or guests of said lodging house, rooming house or hotel, and to the Chief of Police or any regular policeman or police detective of said City of Los

Inspection of register

Angeles. (*Ord. 5760, N. S., Sec. 1*)

Register must be signed

Sec. 996. That before furnishing any lodging for hire to any person in any lodging house, or before renting any room to any person or persons in any rooming house, or before furnishing any accommodations to any guest at any hotel in the City of Los Angeles, the proprietor, manager or owner thereof shall require the person to whom such lodgings are furnished, or room is rented, or accommodations furnished, to inscribe his name in such register kept for that purpose as hereinbefore provided and shall set opposite said name the time when said name was so inscribed, and also the room or rooms occupied by such lodger, roomer or guest. (*Ord. 5760, N. S., Sec. 2*)

Penalty

Sec. 997. Any violation of said ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed one hundred ($100.00) dollars, or by imprisonments in the City Jail of said City of Los Angeles and not to exceed fifty (50) days or by both such fine and imprisonment. (*Ord. 5760, N. S., Sec. 3*)

L.A., Cal., Mun. Code § 11.00 (2004)
(Current Version)

(Amended by Ord. No. 175,676, Eff. 1/11/04.)

(a) **Short Title. Reference to Code in Prosecutions. Designation in Ordinances.** This Code, which consists of criminal or regulatory ordinances of this City, shall be known as the "Official Los Angeles Municipal Code," and it shall be sufficient to refer to the Code as the "Los Angeles Municipal Code" in any prosecution for the violation of any of its provisions; it shall also be sufficient to designate any ordinance adding to, amending or repealing this Code or a portion of this Code as an addition or amendment to or a repeal of the "Los Angeles Municipal Code."

(b) **Existing Law Continued**. The provisions of this Code, to the extent they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations of the Code and not as new enactments.

(c) **Construction.** The provisions of this Code and all proceedings under it are to be construed with a view to effect its objectives and to promote justice.

(d) **Effect of Code on Past Actions and Obligations Previously Accrued**. Neither the adoption of this Code nor the repeal of any ordinance of this City shall in any manner affect the prosecution for violation of ordinances, which violations were committed prior to the effective date of the ordinance, nor be construed as a waiver of any

license or penalty at the effective date due and unpaid under the ordinance, nor be construed as affecting any of the provisions of the ordinance relating to the collection of any license or penalty or the penal provisions applicable to any violation, nor to affect the validity of any bond or cash deposit in lieu of a bond, required to be posted, filed or deposited pursuant to any ordinance or its violation, and all rights and obligations associated with the ordinance shall continue in full force and effect.

(e) **References to Specific Ordinances**. The provisions of this Code shall not in any manner affect deposits or other matters of record which refer to, or are otherwise connected with ordinances that are specially designated by a number or otherwise and which are included within this Code, but those references shall be construed to apply to the corresponding provisions contained within this Code.

(f) **Heading, Effect of**. Division, chapter, article and section headings contained in this Code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any division, chapter, article or section.

(g) **Reference to Acts or Omissions Within This City**. This Code shall refer only to the omission or commission of acts within the territorial limits of the City of Los Angeles and that territory outside of this City over which the City has jurisdiction or control by virtue of the Constitution, Charter or any law, or by reason of ownership or control of property.

(h) **Proof of Notice**. Proof of giving any notice may be made by the certificate of any officer or employee of this City or by affidavit of any person over the age of 18 years, which shows service in conformity with this Code or other provisions of law applicable to the subject matter concerned.

(i) **Notices, Service of**. Whenever a notice is required to be given under this Code, unless different provisions in this Code are otherwise specifically made applicable, the notice may be given either by personal delivery to the person to be notified or by deposit in the United States Mail in a sealed envelope, postage prepaid, addressed to the person to be notified at his or her last known business or residence address as it appears in the public records or other records pertaining to the matter to which the notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the mail.

(j) **Prohibited Acts; Include Causing, Permitting, Suffering**. Whenever in this Code any act or omission is made unlawful it shall include causing, permitting, aiding, abetting, suffering or concealing the fact of the act or omission.

(k) **Validity of Code**. If any section, subsection, sentence, clause, phrase or portion of this Code is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Code. The Council of this City hereby declares that it would have adopted this Code and each section, subsection, sentence, clause, phrase or portion of the Code, irrespective of the fact

that any one portion or more sections, subsections clauses, phrases or portions are declared invalid or unconstitutional.

(l) In addition to any other remedy or penalty provided by this Code, any violation of any provision of this Code is declared to be a public nuisance and may be abated by the City or by the City Attorney on behalf of the people of the State of California as a nuisance by means of a restraining order, injunction or any other order or judgment in law or equity issued by a court of competent jurisdiction. The City or the City Attorney, on behalf of the people of the State of California, may seek injunctive relief to enjoin violations of, or to compel compliance with, the provisions of this Code or seek any other relief or remedy available at law or equity. **(Amended by Ord. No. 177,103, Eff. 12/18/05.)**

Violations of this Code are deemed continuing violations and each day that a violation continues is deemed to be a new and separate offense and subject to a maximum civil penalty of $2,500 for each and every offense.

As part of any civil action, the court may require posting of a performance bond to ensure compliance with this Code, applicable state codes, court order or judgment.

(m) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code, shall be guilty of a misdemeanor unless that violation or failure is

declared in this Code to be an infraction. An infraction shall be tried and be punishable as provided in Section 19.6 of the Penal Code and the provisions of this section. Any violation of this Code that is designated as a misdemeanor, may be charged by the City Attorney as either a misdemeanor or an infraction.

Every violation of this Code is punishable as a misdemeanor unless provision is otherwise made, and shall be punishable by a fine of not more than $1,000.00 or by imprisonment in the County Jail for a period of not more than six months, or by both a fine and imprisonment.

Every violation of this Code that is established as an infraction, or is charged as an infraction, is punishable by a fine as set forth in this Code section, or as otherwise provided in this Code, not to exceed $250.00 for each violation.

As an alternative enforcement method that may be used in the sole discretion of the City, violations of this Code may be addressed through the use of an Administrative Citation as set forth in Article 1.2 of Chapter 1 of this Code. The administrative fines prescribed by Chapter 1, Article 1.2 may be sought in addition to any other remedy, including, but not limited to, criminal remedies, injunctive relief, specific performance, and any other remedy provided by law. The remedies provided by Chapter 1, Article 1.2 of this Code are cumulative to those prescribed by this Code or other applicable law and are not exclusive. **(Added by Ord. No. 182,610, Eff. 8/2/13.)**

Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by that person, and shall be punishable accordingly.

(n) Pursuant to Government Code Section 38773, the City may summarily abate any nuisance at the expense of the persons creating, causing, committing, or maintaining it and the expense of the abatement of the nuisance may be a lien against the property on which it is maintained and a personal obligation against the property owner.

(o) Pursuant to Government Code Section 38773.7, upon entry of a second or subsequent civil or criminal judgment within a two-year period that finds an owner of property responsible for a condition that may be abated in accordance with California Government Code Section 38773.5, a court may order the owner to pay treble the costs of the abatement. These costs shall not include conditions abated pursuant to California Health and Safety Code Section 17980.

L.A., Cal., Mun. Code § 11.00(m) (1936)

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this Code, unless provision is otherwise herein made, shall be punishable by a fine of not more than $500.00 or by imprisonment in the City Jail for a period of not more than six months or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued, or permitted by such person and shall be punishable accordingly. In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be, by this City, summarily abated as such, and each day that such condition continues shall be regarded as a new and separate offense.