



October 25, 2016

*Via U.S. Mail and Electronic Mail*

Douglas T. Sloan, City Attorney  
Francine M. Kanne, Chief Assistant City Attorney  
2600 Fresno Street, Room 2031  
Fresno, California 93721-3602

**Re: City of Fresno's Process for Approving Parades and Demonstrations**

Dear Mr. Sloan and Ms. Kanne:

I am writing on behalf of the American Civil Liberties Union of Northern California. Over the last several years my office has received a number of calls from people who were encountering difficulties in obtaining the proper permits to hold a parade or demonstration in Fresno; this year's Pride parade is the most recent example of this and is what prompted me to request records about the City's processes and practices for approving these events.

After reviewing the documents that the City provided me on August 2 in response to my records request, I am writing to ask that you take steps to ensure that the application packet and the City's procedures for processing applications are consistent with the Fresno Municipal Code and the Constitution.<sup>1</sup> My hope is that this will make the process easier and clearer for applicants and will reduce the potential for future misunderstandings.

Specifically, I hope you will take the following actions:

- 1. The City should establish and publicize the free-speech routes required by the Municipal Code.**

The Municipal Code requires the City to establish free-speech routes for special events involving First Amendment expression. §§ 14-203(g), 14-2414(d). It must make a description of these routes and the fee schedule associated with them available to the public. § 14-2414(d).

---

<sup>1</sup> By "application packet" I mean the application along with the rules and regulations that were included as Exhibit A to the City's response to my PRA request.

Applicants that agree to use these routes enjoy a number of benefits: They can apply for permits 22 days in advance of the event, rather than the usual 30 days. § 14-2405(a). The City must act on their application within 10 days, rather than the usual 15. § 14-2407. They can know before they apply what the fees for police and traffic services will be. § 14-2414(d). And they have a right to have these fees waived if they certify that paying them will create an unreasonable burden on their free-speech rights. § 14-2414(e).

Part six of my PRA request specifically asked for documents describing these routes; none of the documents provided in response provides any description of them or even suggests that they exist (other than the Code sections requiring them). The City's application packet not only fails to mention them, it suggests that there are no such routes (for example, by stating that all applications must be submitted 30 days in advance). And I have heard in the past that people have been unable to obtain information about these routes. It therefore appears that the City has failed to establish these routes; at the very least, it is failing to make them available to the public, in violation of the Code.

The City should establish these routes and include a description of them and the applicable fees in the permit application packet and on its website.

**2. The City should ensure that its written and verbal instructions accurately reflect the Code's timeframes for submitting applications.**

The Municipal Code states that applications may be submitted between 90 and 30 days before the event for most routes, or between 90 to 22 days for free-speech routes. § 14-2405(a). But the City's application packet states that permits should be submitted between 30 and 45 days before the event, with no mention of the shorter period for people who will use the free-speech routes. Moreover, I understand that staff tells applicants not to submit their applications until approximately 30 days before the planned event.

The City should revise its instructions so that they accurately state the statutory time limits for submitting an application, both for free-speech routes and for other routes. It should also ensure that staff provide accurate information about these time limits. This will comply with the Code and also allow more time for planning of events.

**3. The City should ensure that staff complies with the Code's time limits for processing applications.**

The Code requires the City to act on an application within 15 days (or, when free-speech routes are selected, 10 days) of receiving it. § 14-207. It also requires the City to inform the applicant in writing of any denial, modification, or permits, as well as the right to appeal. *Id.*

The City's response to my PRA request shows that it often misses this deadline. And as the process surrounding the Pride parade illustrates, this can make

planning for the event much more difficult than it needs to be. As the California Court of Appeal wrote in holding that our state constitution requires the government to act on parade permits within a fixed deadline,

to leave the matter open-ended impermissibly places the fate of a parade application in official limbo, both chilling and freezing the applicant's free speech intentions and expectations.<sup>2</sup>

The City should ensure that it acts on every application within this 15-day statutory limit and provides the notice required by the Code. In addition, it should revise its application packet to inform applicants that they will receive a decision within 15 days.

**4. The City should eliminate the Special Event/Street Closure Notification requirement or revise it to comply with the Code and the Constitution.**

The City's parade-permit application packet includes a form entitled "Special Event/Street Closure Notification," with spaces for names, signatures, addresses, and telephone numbers of people to acknowledge that they are "aware of the event in [their] area" and that the streets will be closed. The form also provides a phone number for people to call if they object to the closure.

It is not clear to me how this form is used. My PRA request specifically asked for any instructions or policies that would clarify this; but I received no documents in response other than the form itself and a copy of the municipal Code. Some of the applications included street-closure notifications, but others did not. As I noted in my May 31 letter regarding the Pride parade, I understand that the organizer of that parade was initially told that he would have to obtain the listed information from all residents and business owners along the parade route, and that if any of them objected he would not receive a permit. I also understand that the City later told him he did not have to go through this full process.

The City cannot require persons who want to have a parade to go door-to-door informing residents of their intent, much less to obtain their permission. Nothing in the Municipal Code authorizes such a requirement; to the contrary, the Code contains an exclusive lists of the grounds for denying a permit, which does not include any failure to provide notice, much less to obtain consent or personal information from, persons along the route. Imposing this unauthorized requirement thus violates both the Municipal Code and the constitution. *See Dillon v. Mun. Court*, 4 Cal. 3d 860, 870 (1971) (invalidating ordinance because it did not expressly require city to grant parade permit that satisfied statutory criteria).

In any event, the constitution would not allow such a requirement. The government cannot make it more difficult or expensive to obtain a parade permit because it expects that other people will object to the event. *See Forsyth Cty., Ga. v.*

---

<sup>2</sup> *Long Beach Lesbian & Gay Pride, Inc. v. City of Long Beach*, 14 Cal. App. 4th 312, 332 (1993).

*Nationalist Movement*, 505 U.S. 123, 133-34 (1992); *Bachellar v. Maryland*, 397 U.S. 564, 567 (1970) (“the public expression of ideas may not be prohibited ... simply because bystanders object to peaceful and orderly demonstrations.”); *Long Beach Lesbian & Gay Pride, Inc. v. City of Long Beach*, 14 Cal. App. 4th 312, 324-25, 340 (1993). This of course means that a city may not refuse to grant a permit for this same reason; doing so would be to allow an unconstitutional heckler’s veto. See *Church of Am. Knights of Ku Klux Klan v. City of Gary, Indiana*, 334 F.3d 676, 680-81 (7th Cir. 2003). These cases make it clear that the City could not lawfully reject a permit application because local residents object to the parade or refuse to sign the notification form.

Even if the form has a more limited purpose – to ensure that people along the route have notice of the street closures, for example – requiring that parade organizers complete it would not be sufficiently narrowly tailored to serve that interest, given the burdens it imposes and the alternate ways that notice could be provided to affected residents. See *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1038-41 (9th Cir. 2009).

The City should eliminate this form. If it is necessary for applicants to provide notice of street closures, they should be allowed to do so by posting notices along the route or by some other less-burdensome procedure.

**5. The City should review its insurance requirements, and the instructions regarding them, to ensure that they are lawful.**

As the California Court of Appeal has explained, insurance requirements for parades are unconstitutional unless they are sufficiently justified by a City’s actual needs and do not allow third-party insurance companies to determine how much a parade organizer must pay. *Long Beach Lesbian & Gay Pride, Inc. v. City of Long Beach*, 14 Cal. App. 4th 312, 340-41 (1993) (invalidating requirements); see *Mardi Gras of San Luis Obispo v. City of San Luis Obispo*, 189 F. Supp. 2d 1018, 1030 (C.D. Cal. 2002).

It appears that the Fresno’s Municipal Code attempts to address this potential problem by requiring the City to waive the requirement if the applicant certifies that it is impossible to obtain insurance or that the cost of obtaining insurance will create an unreasonable burden on their free-speech rights. See § 14-2414(e).<sup>3</sup> But the application packet does not reflect this; to the contrary, it states that the applicant must furnish proof of insurance, with no mention of any possibility that the requirement will be waived.

The City should revise this packet so that it accurately reflect the insurance requirements and the waiver provision. It should also review its insurance

---

<sup>3</sup> Note that the fact that a group may be able to afford a policy does not mean that they can lawfully be required to pay for one that is priced at a high level because of the group’s message or identity (the group in the *Long Beach* case had successfully obtained insurance).

requirements to ensure that they are consistent with the Code and are narrowly tailored to address the actual risks and liabilities that these events may raise. *See Long Beach Lesbian & Gay Pride, Inc. v. City of Long Beach*, 14 Cal. App. 4th 312, 341 (1993).

**6. The City should revise its hold-harmless/indemnification agreement to comply with the First Amendment.**

The City requires applicants to sign an “indemnification and hold harmless agreement” that requires the permittee to indemnify the City for any damages “arising or alleged to have arisen directly or indirectly out of the special event,” other than damages caused by the gross negligence or willful misconduct of City agents. The agreement also requires the permittee to pay the City’s costs and fees in any litigation.

The Ninth Circuit has held that requiring parade organizers to sign this type of broad indemnification agreement violates the First Amendment, in part because it would require them to pay for the acts of person’s not under their control. *See Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1038-41 (9th Cir. 2009). The City should revise this indemnification agreement to confirm with this holding.

**7. The City should revise the application packet to allow for events that respond to breaking news.**

The First Amendment requires that permit schemes allow for demonstrations in response to breaking news. *See N.A.A.C.P., W. Region v. City of Richmond*, 743 F.2d 1346, 1357 (9th Cir. 1984). The Code recognizes this and allows waiver of the usual deadlines for free-speech events that respond to recent circumstances. § 14-205(b). But the application materials, although they mention other types of waivers, do not mention this; instead, they indicate that applications must be submitted 30 days in advance. Moreover, I understand that applicants who have tried to organize events that would fall within this waiver provision have had been told that they must comply with the 30-day deadline. The application packet should be changed so that it accurately reflects the Code’s waiver provision.

**8. The City should have a written policy to determine whether it will grant exceptions to any permit requirements or will pay permit fees.**

We understand that the City or individual Council members may have granted exceptions to at least some of the permit requirements and also paid some groups’ fees out of their discretionary funds. The Ninth Circuit has held that the First Amendment prohibits a city from waiving the requirements of its parade ordinance or paying permit fees unless it has rules that constrain its discretion as to when it will do so. *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1041-44 (9th Cir. 2009). If the City or its officers intend to do this, the City must

establish “narrow, objective, and definite standards” to govern this process. *Id.* at 1025.

**9. The City should ensure that staff responds to parade applications in writing.**

The Code requires that the City’s decision on a permit must be in writing, and that if it does anything other than grant the permit it must explain why. § 14-207. If it denies an application on grounds that could be corrected, it must allow the applicant to do so. *Id.* 14-208(b). The City should ensure that staff consistently follow this requirement.

**10. The City should revise the application to comply with federal privacy act.**

The federal Privacy Act generally prohibits local governments from requiring applicants for permits to provide their social-security numbers. *See Russell v. Bd. of Plumbing Examiners of Cty. of Westchester*, 74 F. Supp. 2d 339, 347 (S.D.N.Y.), *adhered to on reargument*, 74 F. Supp. 2d 349 (S.D.N.Y. 1999), and *aff’d*, 1 F. App’x 38 (2d Cir. 2001), and *aff’d*, 1 F. App’x 38 (2d Cir. 2001). The Act also requires government forms that request disclosure of a SSN to indicate “whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.” *Id.* (quoting Privacy Act § 7).

The special-event application form contains a space for applicants to provide their social-security numbers, without any explanation. The City should revise the form to comply with the Privacy Act.

---

Please let me know at your convenience whether you are amenable to making these changes. I would be happy to discuss any of this and can be contacted by mail, at [mrisher@aclunc.org](mailto:mrisher@aclunc.org), or at 415-293-6373.

Thank you.

Sincerely,



Michael T. Risher  
Senior Staff Attorney