

CITY OF MILWAUKEE

Form CA-43

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July 2, 2003

Honorable Common Council
City Hall, Room 205

Re: An ordinance to repeal and recreate §105-55-5 of the Milwaukee Code of Ordinance entitled Special Events Permits.

Dear Council Members:

Attached please find a draft ordinance created to repeal and recreate §§ 105-55-4 and 116-38 of the Milwaukee Code of Ordinances.¹ In light of recent court decisions, the current ordinance does not contain certain provisions that would allow it to withstand a constitutional challenge. It is our opinion that the proposed ordinance contains the needed provisions.

In *Thomas v. Chicago*, 122 S.Ct. 775 (2002), political activists brought an action challenging the constitutionality of a municipal park ordinance requiring individuals to obtain a permit before conducting a more than 50-person event. *Id.* The court in *Thomas* held that the ordinance sufficiently limited the licensing official's discretion because it specified reasons for which the permit could be denied. *Id.* The court also held that the ordinance did not have to contain procedural safeguards applicable to content-based regulations in order to be consistent with the 1st Amendment because the ordinance was a content-neutral time, place and manner regulation of use of a public forum. *Id.*

In *Mardi Gras v. St. Louis Obispo*, 189 F. Supp. 2d 1018 (2002), the court held that unreasonable and indefinite delay is tantamount to complete suppression of speech.

Under the proposed ordinance, the denial requirements are based on objective and specific standards to guide the commissioner, chief of police and alderperson and prevent unbridled

¹ Section 105-55-4 entitled the "Special Event Permits" provides regulation for parades, demonstrations, rallies and festivals in right-of-way or on public premises in the City of Milwaukee. Section 116-38 entitled "Civic Center Plaza" provides regulation for the use of the Civic Center Plaza in the city of Milwaukee.

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discretion in denying a permit. In the current ordinance there are no guidelines for denying a permit.

The proposed ordinance allows the commissioner to modify the route, time and place of the special event, to prevent congestion and promote safety provided that the applicant's 1st Amendment rights are preserved. The current ordinance does not provide for the protection of the applicant's 1st Amendment rights.

The proposed ordinance also establishes time limits during which the commissioner must either grant or deny an application for a special event permit and notify the applicant of denial. Again, the current ordinance does not provide any time limit guidelines.

Under the proposed ordinance, the City limits charges to nominal amounts for person, groups, organizations or associations exercising their 1st Amendment rights and does not place unreasonable restrictions as to stifle the free expression of their 1st Amendment rights. *Thomas v. Chicago*, 122 S.Ct. 775 (2002). It is clear that some nominal fee, sufficient to recoup certain costs are allowed.

Very truly yours,



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GOS:wt:66815

Attachment

c: Ronald D. Leonhardt, City Clerk
1047-2002-569