

October 30, 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/Common Council File No. 99046

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 and to fill the above Common Council file. In light of recent court decisions, it is our opinion that the current ordinance should be revised so that it will better withstand a constitutional challenge.

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.* In *Mardi Gras v. St. Louis Obispo*, 189 F. Supp. 2d 1018, C.D. Cal., 2002, the court held that unreasonable and indefinite delay in deciding to issue or deny a permit is tantamount to complete suppression of speech.

Under the proposed ordinance which is attached, the denial requirements contain objective and specific standards to guide the commissioner of public works, chief of police, and alderpersons, and to prevent impermissible standardless discretion in denying a permit.

The proposed ordinance allows the commissioner to modify the route, time and place of the special event, to prevent congestion, and to promote the safety and welfare of the public. In so

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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doing, the Common Council should propose an adequate alternate route so that the applicant's First Amendment rights are preserved.

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, as is required.

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,

GRANT F. LANGLEY
City Attorney

GENEVIEVE O'SULLIVAN-CROWLEY
Assistant City Attorney

GOS:wt:69602
Attachment

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