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The Honorable Christine C. Quinn
Speaker of the New York City Council
City Hall
New York, New York 10007

New York City Parade Regulations

Dear Madame Speaker:

On February 21, 2007, I wrote to you to express the serious concerns of the New York City Bar Association about the new rules governing parade permits that were adopted by the New York Police Department on January 26, 2007. These rules define “parade” as any “recognizable group” of “50 or more pedestrians, vehicles or bicycles” that “procee[d] together upon any public street or roadway”; any such “recognizable group” is required to apply for and obtain a parade permit in advance or be subject to arrest for parading without a permit. As we wrote last February, it is the Association’s view that these new rules are critically flawed in several ways.

One of these critical flaws is that the Police Department has been given the authority to define what constitutes a “parade”—and to determine the processes and criteria for issuing parade permits—in the first place. Section 10-110 of the New York City Administrative Code, which was enacted by the City Council, provides generally that a permit must be obtained from the Police Commissioner before a “parade” can take place “upon any street or in any public place.” However, the Administrative Code does not define “parade” in any way and provides only the most general guidance for determining when parade permits should be granted or denied—for example, authorizing the Commissioner to deny a permit if a parade “will be disorderly in character or tend to disturb the public peace”. By enacting such a general code provision and then leaving it to the Police Commissioner’s discretion to make all other determinations relating to parade permits, the City Council has effectively delegated to the NYPD all responsibility to decide which events are truly “parades” requiring permits and when and how those permits should be issued. We recognize that you and your staff worked with the NYPD and were able to achieve some modifications in the regulations, but those changes are not adequate, and do not resolve the basic issue of inappropriate delegation to the NYPD.

As the Association explained in its Statement submitted to the Police Commissioner on November 27, 2006 (a copy of which was provided to you) and again in my letter to you dated February 21, 2007, this sort of unguided delegation is improper, especially where rights of free expression are at stake. Parades and other public gatherings are core First Amendment activities and should not be restricted absent compelling reasons and objective, definite standards. Indeed, because both the delegation of authority to the Police Department and the Police Department's implementing regulations are so broad and open ended, the police will inevitably engage in a wide degree of selective and discretionary enforcement, which has the very real potential for becoming a means for suppressing particular points of view.

As we have previously said, the Association believes the City Council should amend the Administrative Code—after public hearings and debate—to clearly define what a “parade” is and to establish specific, content-neutral criteria for issuing parade permits. That legislating with this level of specificity is fully within the role and competence of the Council is demonstrated by the Council's establishment of more fully realized regulatory schemes in a number of areas, for example, The Smoke Free Air Act (NYCRR Title 17, Chapter 5), unlawful real estate practices (NYCRR Title 8, Chapter 2, and, in the same Title as the parade regulations, regulation of firearms (NYCRR Title 10, Chapter 3).

The Association has noted your recent public statements—in an editorial published on October 5, 2007, in the New York Blade and in an April 17, 2007, radio interview with Brian Lehrer on New York Public Radio—made in response to protests that have been directed at the Police Department's parade regulations and at the failure of the City Council to take any action to address the flaws in those regulations. For example, in your New York Blade editorial, you write that the parade regulations “are police department rules—not legislation and not written by the City Council. Under city law, the NYPD is allowed to promulgate these rules without legislative input.” Similarly, you told Brian Lehrer that “the police department has the right, by law, and in some ways the requirement, to come up with parade regs. And there's a clear provisional law that empowers them to do that.”

These statements seem to suggest that, as a matter of law, the City Council has no role to play in the permitting of parades and is powerless to fix the obvious flaws in existing parade regulations promulgated by the Police Department. As discussed above, that is not correct. The Police Department currently has the power to promulgate parade regulations only because the City Council delegated that power to the Police Department by providing only broad and general guidance concerning parade permits in the Administrative Code and leaving everything else up to the Police Department's discretion. The City

Council can at any time rescind this delegation to the Police Department by amending the Administrative Code to establish a clear definition of "parade" and clear guidelines to be followed by the Police Department in issuing parade permits. We urge the Council to do so, and would be pleased to work with the Council in crafting this legislation.

Very truly yours,



Barry Kamins

cc: Elizabeth Fine, Esq.
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