

NEW YORK  
CITY BAR

BARRY M. KAMINS  
PRESIDENT  
Phone: (212) 382-6700  
Fax: (212) 768-8116  
bkamins@nycbar.org

February 21, 2007

The Honorable Christine C. Quinn  
City Hall  
New York, New York 10007

Re: Revision of Chapter 19 of Title 38 of the Official Compilation of  
Rules of the City of New York

Dear Speaker Quinn:

I am writing to express the serious concerns of the Association of the Bar of the City of New York about the recent amendment to the provisions of Title 38 of the Official Compilation of the Rules of the City of New York adopted by the New York Police Department. This amendment, which defines "parade" for purposes of the City's permitting scheme, comes in the wake of harsh public criticism, by the Association and others, of an earlier version of the regulation that threatened to deter free expression and reflected a wrongful delegation of power to the NYPD.

Now, in the rule's final version, the NYPD has defined "parade" as any "recognizable group" of "50 or more pedestrians, vehicles or bicycles" that "proceed together upon any public street or roadway". Any such "recognizable group" would be required to apply for and obtain a parade permit in advance or be subject to arrest for parading without a permit. It is the Association's belief that this new definition of parade is critically flawed in several ways.

First, the definition is so vague and overbroad that it would necessarily sweep within its reach dozens of kinds of public gatherings that are in no way a "parade" and that pose no meaningful risk to public safety. Notably, the rule does not say whether "public streets" include sidewalks and thus potentially would reach public gatherings having no impact on vehicular traffic; the rule also fails to distinguish between groups of vehicles or bicycles traveling together on the streets in a perfectly legal manner that does not impede traffic and groups of pedestrians that intend to demonstrate, block intersections or otherwise tie up traffic. As a result, the rule potentially makes unlawful parades out of clearly harmless, commonplace activities. For example, class trips, funeral processions and tour groups often involve more than 50 participants and proceed to a certain extent on "public streets". Similarly, groups of commuters emerging from or approaching a mass transit facility, as well as groups standing in line outside theaters, museums and other public spaces, could be deemed "parades" under the NYPD's new rule and required to obtain parade permits in advance or face the prospect of being arrested. That is a nonsensical result.

Second, the definition's vagueness and overbreadth is an invitation to selective enforcement because it gives the NYPD essentially unfettered discretion to decide which groups need permits

(and can be arrested) and which do not. Indeed, the new definition of parade turns on the amorphous concept of “recognizable group” – a term that is just as inappropriately vague and open-ended as the term “procession” used in the prior definition of parade. As one court has already noted, such a vague term provides “no guidance” concerning when a group is required to obtain a parade permit. *City of New York v. Times’ Up, Inc.*, 2006 WL 346491, \*8 (N.Y. Sup. Ct. 2006). It is also inconceivable that the NYPD will actually enforce the City’s parade regulations against every group of 50 or more that “proceeds on a public street” – lest the NYPD actually get into the business of arresting the participants in school trips, funeral processions and tour groups. The NYPD will thus inevitably engage in a wide degree of selective and discretionary enforcement, which has the very real potential for becoming a means of suppressing particular points of view.

Third, by requiring a permit in advance, the NYPD’s definition of “parade” incorrectly proceeds from the premise that all spontaneous public gatherings are inappropriate and should be banned if they involve 50 or more people. That is, we submit, simply wrong. Spontaneous public gatherings have a long and revered history in the country (and in this City) and are firmly protected by the First Amendment. Any suggestion that all such gatherings pose an undue risk to public safety is not credible. Moreover, the whole nature of such spontaneous gatherings – for example, as the crowds that assembled in various parts of the City following the September 11 attacks – is that groups often begin small but grow as others are moved to join in. The permitting process, which requires providing detailed information in advance, should not be used to outlaw such gatherings.

Finally, the problems associated with the NYPD’s new definition of parade underscore a critical institutional problem in the City’s approach to parade regulation: the City Council has effectively delegated to the NYPD all responsibility to determine which events are truly “parades” requiring permits and when and how those permits should be issued. This sort of unguided delegation is improper, especially where rights of free expression are at stake.

The NYPD has had three opportunities to develop an appropriate definition of parade in the face of criticism from the courts and from the public. The NYPD has failed in each instance. Thus, the Association respectfully urges that the City Council should now fulfill its responsibilities to the people of New York by amending the Administrative Code – after public hearings and debate – to define clearly what a “parade” is and to withdraw its unduly broad delegation to the NYPD.

Very truly yours,



Barry Kamins

COPIES TO:

Elizabeth Fine, Esq.

The Council of the City of New York, Office of General Counsel  
250 Broadway, 15th Floor  
New York, New York 10007

Assistant Deputy Commissioner Thomas P. Doepfner  
New York City Police Department  
1 Police Plaza  
New York, New York 10038

Michael A. Cardozo, Esq.  
Corporation Counsel of the City of New York  
100 Church Street  
New York, New York 10007