

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

DATE: October 16, 2012

TO: Public Safety and Neighborhood Services Committee Members

FROM: City Attorney

SUBJECT: FREEPB Special Event Permit Appeal Procedural Issues

INTRODUCTION

The requested appeal by FREEPB of the “de facto” denial of a special event permit for July 14, 2012, will be docketed on the October 24, 2012 agenda of Public Safety and Neighborhood Services Committee pursuant to San Diego Municipal Code section 22.4015. This appeal is under the provisions of the City’s Special Events Ordinance (SDMC §§ 22.4001-4038) (Special Events Ordinance). Due to the unique circumstances of this appeal, we are providing the Committee with additional legal guidance on procedural issues as it considers this matter.

Because the requested event date has passed and the permit as requested can no longer be issued, the Committee may deny the appeal as moot. Alternatively, the Committee may schedule an appeal hearing on the limited issue of the contested permit condition as applied to the requested permit.¹ The decision on appeal would be advisory only as to any future permit. In order to have a broader discussion of issues related to City processing of special event permits and alcohol conditions in relation to future permits, the Committee would need to schedule a separate information item on a future agenda.

ANALYSIS

The Special Events Ordinance provides that the City’s options in taking action on a requested special event permit are limited to 1) issuance of a permit in accordance with the terms of the application; 2) issuance of a modified permit, subject to mutual agreement between the City Manager and the applicant; or 3) denial of the permit application. (SDMC § 22.4018(f)) Denials are to be provided in writing, and an applicant may appeal the denial to this Committee. The decision of the Committee is the final administrative remedy. (SDMC § 22.4015)

¹ If a full hearing is scheduled, it would be at a future date, consistent with the Committee’s process on other appeals.

Public Safety and Neighborhood

Committee Members

October 16, 2012

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In this case, it appears that none of the three actions occurred. The attached appeal letter indicates that the City was prepared to issue a modified permit, but the permit modification was *not* accepted by the applicant. The applicant has appealed the modification as a “de facto” denial based on a July 11 email attached to the appeal letter. The appeal was filed July 13, the day before the scheduled event.

An appeal is moot when the occurrence of an event makes it impossible for the appellate body to grant effective relief. (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind* 67 Cal. 2d 536, 541 (1967); *Mercury Interactive Corporation v. Klein* 158 Cal. App. 4th 60, 77-78 (2007)) In this case, the requested event date has passed. If a denial had been issued and an appeal heard prior to the scheduled event, the Committee potentially could have approved the requested permit for the event. That relief cannot be provided here. The event can no longer be held on the requested date and the Committee cannot approve a permit for a future event date because that event date and the related factors to consider are not before it.

In reviewing a special event permit application, the City takes into account not only the proposed event location, but also the date and any other event applications related to the same location at that time. An event that might be accommodated on a requested date may not be accommodated on a different date due to changes in those conditions. A change in the event date requires re-evaluation of the application to address then existing conditions.

Because the Committee may not grant effective relieve, it may deny the appeal as moot. Denial on this ground would not prevent the applicant from applying for a special event permit for the same activity on a future date. Any such application would be processed in accordance with the provisions of the Special Events Ordinance.

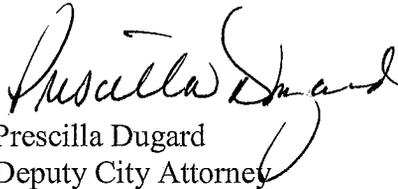
Alternatively, the Committee could schedule an appeal hearing on the grounds stated in the appeal letter. Courts occasionally will exercise discretion to hear an appeal, even when the issues are moot, if there are special circumstances. One of these circumstances is when the same controversy is likely to recur between the parties (*City of Hollister v. Monterey Insurance Co.*, 165 Cal. App. 4th 455, 480 (2008); *In re Anna S.*, 180 Cal. App. 4th 1489, 1498 (2010)). This assumes the court could then actually decide the controversy between the parties. In the case of the special event permit, even if the Committee did hear the appeal, its decision could not be binding because a new date would necessarily require the permit be reviewed in the context of the new circumstances. Therefore, it is unlikely the same controversy is likely to recur.

In addition, the Committee’s role on appeal is limited to the permit before it. The issues on appeal would be limited to discussion of condition number 9 as applied to the requested permit on the requested date and location. In order to have a broader discussion of special event permit processing and issues related to alcohol conditions and to potentially affect future permits, the Committee would need to schedule a separate information item for discussion.

CONCLUSION

The requested event date has passed and the requested permit can no longer be granted. Therefore, the Committee has the discretion to summarily deny the appeal as moot. If the Committee votes to hold a hearing on the issues raised in the appeal letter, any decision would be an advisory opinion as to the limited issue on appeal. In order to have a broader discussion on the City's implementation of the Special Event Ordinance, including processing and alcohol related conditions, a separate information item should be scheduled.

JAN I. GOLDSMITH, CITY ATTORNEY

By  Prescilla Dugard
Deputy City Attorney

PMD:jdf
Attachment

City of San Diego
Office of the City Clerk

MEMORANDUM

533-4000

DATE: July 13, 2012
TO: Mary Ann Wallace, Council Committee Assistant
FROM: City Clerk
SUBJECT: Hearing to be Set Before Committee

The City Clerk's Office has received an appeal from FREEPB.Org, Robert Rynearson, pursuant to San Diego Municipal Code Section 22.4015 relative to Special Event Permit Application submitted August 29, 2011, denied based on the attached email correspondence from Lt. Nisleit on July 11, 2012, and the Special Even Permit Document that we have inspected but have not been given a copy of, we contend that condition number 9 placed on our conditional Special Event Permit is tantamount to a denial of our Special Event Permit as requested in our Special Event Permit Application.

A copy of the appeal is attached hereto.

ELIZABETH MALAND
City Clerk



By
Deputy City Clerk
Linda Irvin

Attachments 3

Appeal Application
Letter from FREEPB.ORG 07-13-12
Email from Lt. David Nisleit



APPEAL TO COUNCIL COMMITTEE

RECEIVED
CITY CLERK'S OFFICE

12 JUL 13 PM 1:54

The Undersigned FREEDB.ORG
(Print or type name of appellant) SAN DIEGO, CALIF.

does hereby appeal the decision of CITY OF SAN DIEGO,

POLICE DEPARTMENT SPECIAL EVENTS / SPECIAL EVENTS

pursuant to San Diego Municipal Code Section 22.4015

concerning SPECIAL EVENT PERMIT APPLICATION FOR LEISURE OLYMPICS
(state Case/Permit No. or nature of request)

This appeal is based on the following specific points:

DE FACTO DENIAL OF SPECIAL EVENT PERMIT APPLICATION.
(SEE ATTACHED LETTERS)

(attach additional sheets if necessary)

ROBERT RYNEARSON
(Print or type name)

P.O. BOX 9250
(Address)
SAN DIEGO, CA 92169

(858) 220-6925
(Telephone)

(If filing as an agent, please include name and address of client below)

FREEDB.ORG
(Print or type name)

P.O. BOX 9250
(Address)
SAN DIEGO CA 92169

I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Robert Ryneason
(Signature of Appellant)

07-13-12
(Date)



FREEPB.ORG
P.O. Box 9250
San Diego, CA 92169

July 13, 2012

City Clerk, Elizabeth Maland
City of San Diego
202 C Street, Second Floor
San Diego, CA 92101

Dear Ms. Maland:

In accordance with Municipal Code section 22.4015, please allow this correspondence to serve as petition for appeal of the denial of our Special Event Permit Application submitted August 29, 2011, for our special event scheduled for July 14, 2012, known as the Leisure Olympics.

Based on the attached email correspondence Lt. Nisleit, and the Special Event Permit document that we have inspected but have not been given a copy of, we contend that condition number 9 placed on our conditional Special Event Permit is tantamount to a denial of our Special Event Permit as requested in our Special Event Permit Application.

The grounds for this appeal include but are not limited to the following:

- o We have been informed by city officials that the ONLY reason we would need to seek a "Citywide Special Event Permit" rather than a Modified Special Event Permit for our event is so that our event could allow BYOB by participants throughout the event venue.
- o Condition 9 on our conditional permit, forbids BYOB by participants throughout the event venue.
- o We have made it abundantly clear that we have not modified our application to eliminate BYOB by participants throughout the event venue, and do not intend to accept such a condition.
- o We further requested that our application be approved or denied based on the outline of what was presented in the original application and addenda.
- o Other applicants are afforded the same permissions as we have requested at their events. We intend to put in

place prudent measure to ensure such permissions are managed appropriately as other applicants have done.

If you are in need of any further information please don't hesitate to contact me by phone at (858) 220-6995, by email at rrynearson@freepb.org or at the address above.

Sincerely,



Robert Rynearson
Treasurer, FREEPPB.ORG

Cc: Cory Briggs
Lt. Nisleit
Drew Ector
directors

enclosures

FREEPPB.ORG is a public charity whose mission is to prevent the erosion and promote the expansion of individual rights, privileges, and freedoms in San Diego, with an emphasis on public parks and beaches. FreePB.org strives to achieve this mission by:

- Working to change the mindset that more laws are the solution to community problems
- Promoting public awareness of threats to individual rights, privileges and freedoms
- Encouraging and facilitating public participation in the overall lawmaking process
- Supporting alternatives to restrictive laws, including actively working to mitigate problems via direct involvement, volunteer work, and appropriate partnerships

FreePB.org is dedicated to being a highly inclusive community organization that adheres to the highest ethical standards, and respects the right of all citizens to express their points of view.

From: **Nisleit, David** <dnisleit@pd.sandiego.gov>
Date: Wed, Jul 11, 2012 at 8:51 AM
Subject: Leisure Olympics
To: "rrynearson@freepb.org" <rrynearson@freepb.org>

Rob I am following up with you regarding your Leisure Olympics event scheduled to take place at Crown Point Shores this coming Saturday.

As it pertains to alcohol, you will need to abide by the rules set forth regarding alcohol. Your beer gardens will need to be in compliance with the guidelines set forth in the Special Event manual. You can find these guidelines on pages 65-69. Failure to follow these guidelines could result in your permit not being issued or revoked. Additionally, you have inquired about persons being allowed to bring their own alcohol(BYOB). As previously stated in the meeting you attended, the police department will not authorize your participants and/or volunteers to bring their own alcohol (BYOB). The reason for not authorizing your BYOB component is the police department cannot adequately control your BYOB component in this park.

If you have any questions please send me an email or feel free to give me a call

David Nisleit, Lieutenant
SDPD, Special Operations
858-495-7860 Office