



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: October 19, 2012

TO: The Committee for Public Safety and Neighborhood Services

FROM: Carolyn Wormser, Special Events Department Director
Lawrence McKinney, Police Department Assistant Chief of Police

SUBJECT: Request for Appeal by FreePB.org regarding Alleged De Facto Denial
of Special Event Permit for Leisure Olympics Prelims

ACTION BEFORE THE COMMITTEE:

Whether to grant the request for appeal by FreePB.org ("Appellant") as to the alleged de facto denial of a Special Event Permit for Appellant's Leisure Olympics Prelims event which was proposed to be scheduled for July 14, 2012

STAFF RECOMMENDATION:

The San Diego Police Department and Special Events Department recommend that the Public Safety and Neighborhood Services Committee ("Committee") dismiss Appellant's request for appeal on grounds of mootness. Regardless of whether there was in fact a denial of Appellant's Special Event Permit Application, the proposed Leisure Olympics Prelims event date has now passed. Should the Committee wish to provide a forum to discuss alcohol management at Special Events, the San Diego Police Department and Special Events Department recommend the docketing of an information-only item at a future Committee meeting for such information to be presented.

SUMMARY:

On August 29, 2011, Appellant initially submitted an incomplete Special Events Permit Application ("Application") for Appellant's proposed Leisure Olympics Prelims event to be scheduled on July 14, 2012 in South Crown Point Shores. The Application was incomplete because Appellant failed to secure the City park site location, which required a waiver to the summer moratorium by the Park and Recreation Department. As a matter of policy to ensure the timely and efficient use of resources, before the Special Events Department or any other department involved in the review of any Application begins the processing of any such Application, the site location must first be obtained. Appellant did not secure the park site location from the Park and Recreation Department until April 4, 2012 and did not amend the Special Event Permit Application with such information until April 11, 2012.

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Shortly thereafter, on May 2, 2012, City Staff involved in the review and authorization of Special Event Permits including representatives from the San Diego Police Department and the Special Events Department met with Appellant at a production meeting to discuss the details of the proposed Leisure Olympics Prelims event ("Event"). The purpose of a production meeting is to provide a roundtable format in which reviewing authorities and the Applicant can discuss all aspects of the Application and make any recommendations for modifications to the event plans. The reviewing authorities typically consist of the various departments and agencies that have jurisdiction over some aspect of an event.

At the production meeting, all of the various aspects of the Application were discussed including the Appellant's request to allow the consumption of alcohol outside of a delineated beer garden. At that time, the San Diego Police Department representatives in attendance including the Northern Division Area Command Lieutenant, Vice Unit Sergeant, Special Events Unit Sergeant, and Special Events Unit Officer clearly represented to Appellant that the San Diego Police Department would not authorize the consumption of alcohol outside the confines of a delineated beer garden, nor would the San Diego Police Department authorize the consumption of alcohol that was not in compliance with the standard terms and conditions as set forth in the Special Event Planning Guide.

Following the production meeting, Appellant continued to work with City departments to obtain the necessary sign-offs from all of the reviewing authorities for all of the various aspects of the Event including compliance with the Special Event Planning Guide requirements for event components and plans such as recycling, storm water pollution prevention, fire safety, certificates of insurance, and park use permits. From May through July 2012, Appellant also sent a series of emails to staff from the Park and Recreation Department and the Special Event Department to determine if it would be possible to fence the entire Crown Point Shores park area to create a delineated beer garden area. However, Appellant was informed by the Park and Recreation Department that securing the entire Crown Point Shores park area was not an option for the proposed event date because the Park and Recreation Department had already issued permits to other individuals and/or entities for use of that park area.

As early as May 2, 2012, Appellant was informed that the San Diego Police Department would only authorize consumption of alcohol in a delineated beer garden that complied with the requirements stated in the Special Event Planning Guide. While Appellant did question this requirement of the San Diego Police Department, Appellant failed to clearly state that Appellant would not proceed with the Event unless such requirement was lifted and instead continued to work with City staff in meeting the sign-off requirements from the reviewing authorities to proceed with the Event. In fact, the Appellant's final certificates of insurance were approved by the Risk Management Department on July 10, 2012. Throughout the Application process and as with all applicants for Special Event Permits, City staff, including representatives of the San Diego Police Department and Special Events Department attempted to work in cooperation with Appellant.

A day before the proposed event was intended to take place, on July 13, 2012 Appellant filed its request for appeal. By the time that Appellant had filed the request for appeal, it had been more than two months since Appellant had been informed by the San Diego Police Department that

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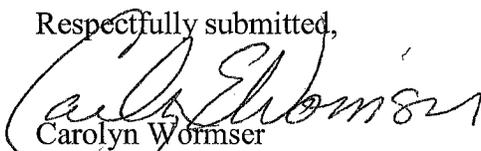
alcohol consumption would only be authorized in a delineated beer garden that complied with the requirements stated in the Special Event Planning Guide. Given the proximity of the filing of the appeal to the intended date of the Event, there was no logistical possibility of scheduling a request for appeal hearing prior to the proposed Event date. As a result, Appellant's request for appeal is moot as there are no grounds upon which this Committee can grant any type of relief or remedy.

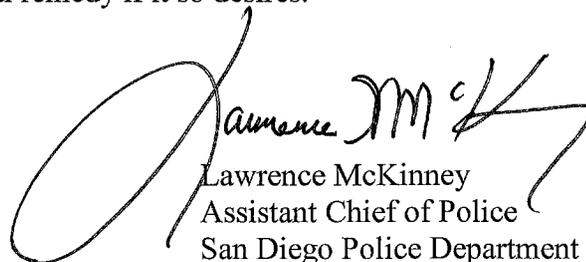
As it currently stands, it has been more than three months since the proposed Event date has passed. If the Committee is inclined to consider the rendering of an advisory decision in the setting of an appeal hearing, it is important to note that such action, to our best knowledge, would be unprecedented for the Committee. The San Diego Police Department and the Special Events Department strongly believe that the Committee's consideration and rendering of a decision in an advisory capacity of an event that has come and gone would set a problematic precedent for hearing requests for appeals as to all moot events. The San Diego Police Department and the Special Events Department also strongly believe that any such decision would not be in the best interests of the City of San Diego as any facts which would necessarily have to be considered would now simply be hypotheticals. Decisions made under hypothetical scenarios are quite often not the same decisions made when the facts present a real, live controversy with real life impacts to consider as numerous variables and considerations need to be factored into any such decision.

In the opinion of the San Diego Police Department and the Special Events Department, there is tremendous risk in weighing a hypothetical situation and rendering an advisory decision as any such decision could potentially be seen as binding the Committee's discretion on any future appeal coming before the Committee involving the same or similar issue. It would further complicate the decision-making of the San Diego Police Department and Special Events Department as it relates to any future issuance of Special Event Permits because the effect of any decision by the Committee would not provide relief for the Appellant as to its foregone Leisure Olympics Prelims event and would create uncertainty as to the weight of the effect of any such advisory decision.

All of these risks would be alleviated if Appellant had timely filed its request for appeal such that there was sufficient time to properly schedule an appeal before the Committee. In fact, nothing prevents Appellant from re-filing an Application for a future date set sufficiently far out so that Appellant can timely file, and the Committee can timely hear, an appeal on a matter for which the Committee can actually provide an actual remedy if it so desires.

Respectfully submitted,


Carolyn Wormser
Director
Special Events Department


Lawrence McKinney
Assistant Chief of Police
San Diego Police Department