

MEMORANDUM OF LAW

DATE: May 24, 1991

TO: Jack Krasovich, Park and Recreation Department

FROM: City Attorney

SUBJECT: Control of "Free Speech" Vendors in City Parks

As you know, this office has been developing an ordinance for Council consideration which would establish reasonable controls over persons and organizations selling goods, which goods are "inextricably intertwined" with their free speech rights. The need for such controls arose out of the decision in *Gaudiya v. San Francisco*, 900 F.2d 1369 (Ninth Cir. 1990). In that case, the court determined that people and organizations exercising free speech rights in public places can also sell goods and merchandise related to their free speech activities.

Our first inclination was to require that such persons and organizations obtain a permit from the City Manager for that purpose in addition to the permit already required under section 57.01 et seq. of the Municipal Code. A discussion of this matter with the Police legal advisors and a representative of the Criminal Division revealed that the 1988 United States Supreme Court decision of *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 101 L.Ed. 2d 669, 108 S.C. 2667, prohibits the enforcement of the permit requirement contained in 57.01 et seq. of the Municipal Code.

At this point, it seems that we should perhaps abandon the new ordinance approach and simply help the City Manager establish reasonable "time, place and manner" restrictions under the authority granted to the City Manager in section 55 of the City's Charter. While such a procedure will probably not result in an opportunity for us to prosecute alleged offenders as misdemeanants in municipal court, the alternative and perhaps more efficient process of seeking injunctive relief in Superior Court is advisable and should be available. Temporary restraining orders, preliminary injunctions, and permanent injunctions may be available through a Superior Court action to stop organizations and individuals from violating reasonable "time, place and manner" restrictions.

You could, therefore, initiate draft regulations which are to be communicated to such groups and enforced through the Superior Court. There is no method of determining with certainty what the courts will accept as reasonable "time, place and manner" restrictions. However, it seems to me that if you took a map of Balboa Park and a map of Mission

Bay Park and identified six or eight areas where persons or organizations could set up not more than one table from which individuals and organizations could operate subject to the attached specifications, such persons and organizations would have difficulty in convincing a judge that they would not have a reasonable opportunity to express their beliefs and at the same time sell their goods. Limiting areas within the park for the sale of goods and merchandise will not preclude persons not selling goods and merchandise from otherwise expressing their thoughts in other areas of the park.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

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Attachment

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