

City of Culver City, California
City Council Agenda Item Report

Meeting Date: 06/12/06		Item Number: <u>A-6</u>	
AGENDA ITEM: Receive and File Report Regarding Stay of Enforcement of Council Policy No. 4008, Sections III.B and IV.B.3 Relating to General First Amendment Activities in the Inner Courtyard Area of City Hall			
Contact Person/Dept.: Carol Schwab and Heather Iker/City Attorney		Phone Number: (310) 253-5660	
Fiscal Impact: Yes ☐ No ☒		General Fund: Yes ☐ No ☒	
Public Hearing: ☐		Action Item: ☒	Attachments: ☒
Public Notification: Master Notification List (06/07/06)			
Department Approval: Carol Schwab, City Attorney (by H. Iker 06/05/06)		CAO Approval: Martin R. Cole for Jerry B. Fulwood (06/07/06)	
City Controller Approval:			
<u>RECOMMENDATION:</u> That the City Council receive and file this report regarding the stay of enforcement of Council Policy No. 4008, Sections III.B. and IV.B.3 (second and third sentences) relating to General First Amendment Activities in the Inner Courtyard Area of City Hall. <u>DISCUSSION:</u> Through ongoing monitoring of First Amendment case law, the City Attorney's office has become aware of recent developments that affect enforcement of the City's current First Amendment Guidelines. Currently, Section III.B of the Guidelines for Implementation of Council Policy No 4008 Regarding Free Speech provides that City property currently being used (e.g. for a special event) by a particular group or applicant under a permit, lease or license is not available for General First Amendment activities by other groups or individuals. Similarly, Section IV.B.3 provides that when the Inner Courtyard is used by the City or Redevelopment Agency (RDA) the area is temporarily restricted to activities undertaken by the City, RDA or any co-sponsors of the activity or event. The federal Ninth Circuit Court of Appeals recently issued a decision which indicates that the City and private event organizers may not completely exclude other types of peaceful First Amendment activities (e.g. leafleting and ordinary free speech) from such events if (1) the event or activity is in a traditional public forum area (e.g. parks, city sidewalks) normally open to First Amendment activities; and (2) the event or activity is open to the general public. (<i>Gathright v City of Portland</i> (9th Cir. 2006) 439 F.3d 573.) This case supersedes case law previously relied on by the City indicating that private permittees could be granted			

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temporary rights to use public forum areas exclusively for their own First Amendment activities.

The *Gathright* decision does not affect permitted events which are closed to the general public, *i.e.* events which are open only to members or invitees of the sponsor, such as private social gatherings, parties or organizational meetings. The decision also does not preclude the City or private event organizers from prohibiting activities that actually interfere with or are disruptive of the permitted special event. The City may also continue to enforce other reasonable restrictions on First Amendment activities in the Free Speech Guidelines and City ordinances, *e.g.* requirements that accessways be kept clear. However, the *Gathright* decision does indicate that the City may not completely prohibit peaceful First Amendment activities in public forum areas during times when the property is being used by another group or for a special event. This rule would also apply to events sponsored by the City itself if held in areas normally open to public First Amendment use.

As an interim measure, the City Attorney is advising all City Departments to cease enforcement of Guidelines Section III.B and Section IV.B.3 (second and third sentences) against individual speakers, leafletters, picketers or others at events on City-owned public forum areas so long as these activities do not actually interfere with the permitted events or activities. It should be noted that City permits are still required for assemblies and parades, use of amplified sound equipment, and setting up tables or displays. These activities would not be allowed in space reserved for another event without a permit, absent unusual circumstances or the consent of all permit applicants.

The City Attorney's office is monitoring the *Gathright* decision for possible reversal by the U.S. Supreme Court. The Portland City Attorney's office filed a petition asking the U.S. Supreme Court to review the case on May 22, 2006, and is seeking friend-of-the-court briefs supporting its petition. An opposition to the request for hearing the matter is due by *Gathright* on June 21, 2006. As well, any friend-of-the-court briefs should be filed by June 21, 2006. Because the Court will soon take its summer recess, no action on Portland's petition is expected before fall 2006. The status of Portland's petition is listed at <http://www.supremecourtus.gov/docket/05-1480.htm>. Once the Supreme Court acts on the *Gathright* case, our office in connection with special counsel will then evaluate what, if any revisions should be made to the Guidelines.

FISCAL ANALYSIS:

There is no fiscal impact.

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ATTACHMENTS:

Council Policy No. 4008 (including Guidelines for Implementation of Council Policy No. 4008 Regarding Free Speech)

MOTION:

That the City Council:

Receive and file this report regarding the stay of enforcement of Council Policy No. 4008, Sections III.B. and IV.B.3 (second and third sentences) relating to General First Amendment Activities in the Inner Courtyard Area of City Hall.