

Gerard, Jennie

From: Kernighan, Pat
Sent: Thursday, May 22, 2014 7:28 PM
To: Gerard, Jennie
Subject: FW: July 30, 2013 Agenda Item 36, an "Ordinance prohibiting the possession of the tools of violence during a demonstration"

Pat Kernighan

Oakland City Council President
And Councilmember for District 2
1 Frank H. Ogawa Plaza
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From: Michael Risher [<mailto:mrisher@aclunc.org>]
Sent: Tuesday, July 30, 2013 6:12 PM
To: Kernighan, Pat; Carey Lamprecht; Kalb, Dan; McElhaney, Lynette; Gallo, Noel; At Large; City Clerk; Parker, Barbara
Subject: RE: July 30, 2013 Agenda Item 36, an "Ordinance prohibiting the possession of the tools of violence during a demonstration"

Dear Council President Kernighan:

Yes, vagueness and the need for uniform application are two distinct issues. Adopting the language of the Los Angeles ordinance would resolve the uniformity issue and part of the vagueness problem because it would make it clear that the law applies to all public assemblies or gatherings of any type. There would still, however, be a question of whether the law must specify the minimum group size that triggers the law.

I am not aware of any case that specifically addresses this issue (the Ninth Circuit's opinion in *Vlasak* upholding the Los Angeles law does not answer this question, because it was a habeas corpus challenge to a state-court conviction, where the federal court had to apply a deferential standard of review of the state courts' decisions. See 329 F.3d at 687). But under the general void-for-vagueness principles that I discussed in my letter, I think that the law (or a binding administrative or judicial interpretation of it) must make it clear how big a group has to be in order to trigger the special restrictions. I also think that it, like permitting requirements, probably cannot constitutionally apply to very small groups of speakers. See *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 2021-24 (9th Cir. 2009). Just how large a group should be before the law applies, and whether it makes sense to impose these restrictions on all public assemblies in Oakland that exceed this limit, are policy, not legal, questions.

I hope this additional analysis is helpful; please let me know if I can provide any more information.

Michael T. Risher
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From: Kernighan, Pat [<mailto:PKernighan@oaklandnet.com>]
Sent: Tuesday, July 30, 2013 4:54 PM
To: Carey Lamprecht; Kalb, Dan; McElhaney, Lynette; Gallo, Noel; At Large; City Clerk; Parker, Barbara
Cc: Michael Risher

Subject: RE: July 30, 2013 Agenda Item 36, an "Ordinance prohibiting the possession of the tools of violence during a demonstration"

Mr. Risher,

I appreciate you sharing your legal opinion on this proposed Ordinance.

As I read your letter, you are raising two different issues. One is that a city cannot discriminate against certain kinds of political speech and therefore should apply the ordinance to all types of public gatherings, not just demonstrations, as does the LA ordinance. Second, you say that the word "demonstration" needs to be defined so that it is not unconstitutionally vague. Did the LA Ordinance define each of the types of gatherings that it applied to? In your opinion, if we used the language from the LA ordinance listing the various types of assemblies, would that solve both problems?

Thank you,

Pat Kernighan

Oakland City Council President
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From: Carey Lamprecht [<mailto:clamplecht@aclunc.org>]

Sent: Tuesday, July 30, 2013 2:35 PM

To: Kalb, Dan; Kernighan, Pat; McElhaney, Lynette; Schaaf, Libby; Gallo, Noel; Brooks, Desley; Reid, Larry; At Large; City Clerk; Parker, Barbara

Cc: Michael Risher

Subject: July 30, 2013 Agenda Item 36, an "Ordinance prohibiting the possession of the tools of violence during a demonstration"

Dear Members of the Oakland City Council,

Attached, you will find a letter from Michael T. Risher, staff attorney at the ACLU of Northern California.

Yours truly,
Carey Lamprecht

Carey Lamprecht · Litigation Assistant · ACLU of Northern California
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