SENT VIA ELECTRONIC MAIL

June 10, 2021

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Dear Ms. Banks, Mr. Bergquist, Ms. Dunlap, and Mr. Holmes,

We have learned that Seattle Parks and Recreation (SPR) recently denied CHOP Art a permit to engage in protected free speech activity. CHOP Art is a non-profit organization that supports social justice through art, self-expression, and education, and they requested a permit for a Juneteenth Celebration at Cal Anderson Park to occur between June 11th and June 13th,

2021. We understand that the event was intended to celebrate the freedom of Black Americans, and to include music, booths, speakers, and other forms of art, but that CHOP Art's permit application was denied because of the content of the event. As the City is well aware, the First Amendment prohibits government restriction of speech based on the content of that speech, including a potential negative reaction from listeners. Thus, we request that the City reverse its denial of a special event permit to CHOP Art, grant the necessary permits, and allow the event to proceed.

1. **Content-Based Restrictions on Speech are Unconstitutional**

CHOP Art seeks to engage in quintessential First Amendment-protected activities, namely, peaceful assembly and demonstrating. *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 152 (1969); *Hague v. C.I.O.*, 307 U.S. 496, 515 16 (1939). Streets and parks are traditional public forums that the First Amendment holds in trust for public use, especially for "purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague*, 307 U.S. at 515. Traditional public forums are where First Amendment expressive activities are afforded the strongest protection and "the government's ability to permissibly restrict expressive conduct is extremely limited." *United States v. Grace*, 461 U.S. 171, 177 (1983).

A central tenet of the First Amendment is that, particularly in public forums, the government may not restrict someone's speech based on the content of that speech. *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015); *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 828 (1994); *Police Department of Chicago v. Mosley*, 408 U.S. 92, 96 (1972); *Turner Broadcasting System Inc. v. FCC*, 512 U.S. 622, 641-43 (1994). A content-based restriction on speech is presumptively unconstitutional. *Reed*, 576 U.S. at 163. Viewpoint discrimination particularly offends the core values of the First Amendment. *Rosenberger*, 515 U.S. at 829.

The government may impose reasonable restrictions on the time, place or manner of speech in a traditional public forum. However, the government must show that the restrictions "are justified without reference to the content of the speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). A restriction is content-based if it allows some speech but not others depending on what the speaker has to say. The First Amendment principle of viewpoint neutrality mandates that "the government [ ] not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views." *Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 96 (1972).

Here, CHOP Art sought a special permit and SPR's denial of a special permit to CHOP Art for a Juneteenth Celebration was clearly based on the content of the event and to limit "more controversial views." Specifically, in its denial, SPR cited the "celebration or commemoration of last year's protest activity," as a significant reason for why the permit would not be granted. This, in and of itself, is a denial on the basis of the substance and content of the First Amendment activity proposed by CHOP Art. *See, Reed, supra; Rosenberger, supra; Mosley, supra; and see* cases including *Forsyth County*, cited below. The government cannot deny a special events permit simply because of how the speech might be perceived.

Nevertheless, organizers worked with the City to address their concerns. Yet the City *still* denied the requested permit with no option to appeal on the basis that CHOP Art celebration did not depart significantly enough from the original conception of the event, stating: "we recognize your efforts to rebrand the event to a Juneteenth event, however we do not feel that the revised event substantially differs from the original, and we have concerns that the public could still view it as a celebration or commemoration of last year's protest activity." This is, again, a clear indication that the permit was denied based on the content of the First Amendment activity sought to be permitted by CHOP Art. The City has certainly allowed public events of this nature in the past. *See* https://www.facebook.com/calandersonpark/events/&sa=D&source=editors&ust=1623285492886000&usg=AOvVaw3067zuz1LNVEQ7GDs_KViB.

Further, even when reasonable restrictions on speech are permissible, the Supreme Court has made it clear that any permitting process must leave open "ample opportunities for communication." *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130 (1992). In this case, SPR not only denied the permit outright, but has made it clear that there will be no possibility or avenue to appeal that denial, leaving no "ample opportunities for communication" open.

2. Allowing Community Perception Regarding the Content of the Event to Influence the City's Decision is an Unconstitutional Heckler's Veto

SPR's rejection of CHOP Art's permit request not only hinged on the content of the free speech event, but how the event might be perceived. SPR stated that it had heard from community members expressing concerns that events commemorating or celebrating prior protests would be disturbing, and that the denial was "partly in response" to those concerns. This too, is a violation of the First Amendment.

Hinging public speech on private opinion will predictably go awry and the Supreme Court has held such practices to be unconstitutional. "Listeners' reaction to speech is not a content-neutral basis for regulation." *Forsyth Cty.*, at 134. Thus, SPR must allow an event even if certain government officials think it may be unpopular, controversial, or that disputes might arise. *Jones v. Bd. of Regents of Univ. of Ariz.*, 436 F.2d 618, 621 (9th Cir. 1970); *Cent. Fla. Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515, 1525 (11th Cir. 1985). "In our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. … Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our history says that it is this sort of hazardous freedom— this kind of openness— that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society." *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 508-509 (1969) (internal citation omitted).

The concerns of how community members may experience or react to someone's speech are not a legitimate basis on which the government may curtail speech. By relying on public concern that "an event that essentially celebrates and commemorates last summer's protests at

Cal Anderson and the surrounding area" would be disturbing or even traumatic to deny CHOP Art's permit, SPR has engaged in an unconstitutional restriction of free speech.

3. SPR's Reference to Safety and Security Standards are Pretextual

SPR has provided no other constitutionally valid rationale in denying CHOP Art's special event permit, only citing unspecified "higher-than-usual safety and security standards" used to evaluate all permit requests as a result of last summer's "extensive protest activity and the lacts [sic] of violence." But SPR does not explain what these standards are, what its concerns related to CHOP Art are, or attribute any of last summer's acts of violence to CHOP Art. Moreover, in an effort to increase events at Cal Anderson Park in the summer of 2021, the City waived many of the permit fees for new events at the park and provided staff support for event planning and related issues. SPR even reached out to Mark Anthony to invite CHOP Art to submit an event proposal for an event at Cal Anderson Park and never mentioned these heightened requirements for permitted free speech activities or safety concerns related to CHOP Art.

There is a "'heavy presumption' against the validity of a prior restraint" on speech. *Forsyth County,* at 130. Any additional "safety and security standards" applied to permits for Cal Anderson Park - a traditional public forum - must be clearly defined, generally applicable and objective, and narrowly tailored to the City's interests. *Seattle Mideast Awareness Campaign v. King County,* 781 F.3d 489, 496 (9th Cir. 2015). The unspecified requirements allegedly utilized by SPR violate well-established First Amendment law on permits for expressive activity, which state that allowing the government unbridled discretion to impose conditions on a permit is unconstitutional.

SPR's email denying the permit demonstrates our concerns that the denial of the permit is a First Amendment violation. The email articulates the basis of the denial, which is that because CHOP Art's event may celebrate or commemorate last year's protests, it inherently presents a security and safety risk. Though shrouded in the cover of "safety" language, this is nothing more than a veiled content-based restriction. As in *Forsyth County* and *College Republicans of University of Washington v. Cauce*, the lack of "narrowly drawn, reasonable and definite standards" result in officials unconstitutionally examining the content of the message that is to be conveyed and relying on the content in making decisions. *Forsyth County,* at 133; *Coll. Republicans of Univ. of Washington v. Cauce,* No. C18-189-MJP, 2018 WL 804497, at *2 (W.D. Wash. Feb. 9, 2018).

4. The City Should Reverse its Unconstitutional Denial of CHOP Art's Permit

There is no doubt that CHOP Art was seeking to engage in constitutionally protected activity when it sought a permit to hold a public event that would express political views regarding the ongoing protests and public discourse regarding systemic racism and police brutality. Further, their desire to celebrate Juneteenth, commemorating the emancipation of those who had been enslaved in the United States, is also protected activity. The Supreme Court "has frequently reaffirmed that speech on public issues occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection." *Colson v. Grohman,* 174 F.3d 498, 506 (5th Cir. 1999) (quoting *Connick v. Myers,* 461 U.S. 138, 145 (1983)).

SPR's denial is clearly based on the content of CHOP Art's event and SPR provides no other reason for the denial. Such a denial is an unconstitutional, content-based restriction on free speech and must be reversed, or CHOP Art will suffer irreparable harm.

As CHOP Art's event is planned to begin on June 11, 2021, it is imperative that you contact us immediately. If the City does not do so, we may need to take emergency legal action.

Sincerely,

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