



Cathryn L. Hazouri, Executive Director • Mark Silverstein, Legal Director

June 16, 2008

David Fine
Office of the City Attorney
1437 Bannock, St., Room 353
Denver, CO 80202
VIA EMAIL David.Fine@denvergov.org

Chief Gerald Whitman
Denver Police Department
1331 Cherokee St.
Denver, CO 80204
VIA FACSIMILE 720-913-7029

Re: City Policy on First Amendment Activity on 16th Street Mall; Request for Training Bulletin in Advance of the Democratic National Convention

Dear David and Chief Whitman:

I write regarding the City and County of Denver's laws regarding First Amendment activity on the public areas of the 16th Street Mall, and the misunderstanding of Denver Police Department officers regarding those laws.

On June 11, 2008, Robert Weiland and other members of the group "WeAreChangeColorado" were standing on the 16th Street Mall sidewalk. Mr. Weiland's group believes in questioning and stimulating public debate regarding the official version of the events of September 11, 2001. On June 11, 2008, Mr. Weiland and members of WeAreChangeColorado were distributing free flyers and DVDs with their message in a peaceful and courteous fashion to persons on the 16th Street Mall who wished to receive them. Mr. Weiland states that he was not selling any items nor blocking any pedestrian traffic.

Like any other member of the public, Mr. Weiland and members of WeAreChangeColorado had the right to engage in free expression on the public sidewalks of the 16th Street Mall under the First Amendment and Article II Section 10 of the Colorado constitution.

Nevertheless, Mr. Weiland and the members of WeAreChangeColorado were confronted by Denver Police Department officers, including DPD Officer Albert St. Peter. The officers ordered Mr. Weiland to cease distributing the flyers and the DVDs, on the basis that they were prohibited from doing so unless they had a "peddler's license."

In addition, the officers told Mr. Weiland and others present that the 16th Street Mall was “private property.” A video¹ recording of the incident documents the officers consistently and uniformly stating, falsely, that the 16th Street Mall was “private property” and that a “peddler’s license” was required to engage in this First Amendment activity on the 16th Street Mall.

Mr. Weiland explained to the officers that he was giving the literature and DVDs for free to people who wished to receive them, and that he was not selling anything. In the video, the officers in fact acknowledge that Mr. Weiland was “handing out” free materials, not selling them.

DPD officers, including Officer St. Clair, handcuffed Mr. Weiland and arrested him. The summons is difficult to read, but it appears Mr. Weiland was cited for violating D.R.M.C. § 47-35, an ordinance that does not exist. The officer may have cited, or meant to cite, Mr. Weiland for violating D.R.M.C. § 47-32,² which requires a license for persons engaged in peddling, which is defined as selling or bartering goods. See D.M.R.C. § 47-16. The officers knew Mr. Weiland was not engaged in selling or bartering goods.

Officer St. Clair also cited Mr. Weiland for violating D.R.M.C. § 38-86, “Obstruction of streets or other public passageways,” and D.M.R.C. § 38-115, “Trespass.” Neither Mr. Weiland nor any else distributing materials blocked or obstructed any pedestrian access. The citation for trespass, I assume, arises from the officers’ universal and erroneous belief that the sidewalks of the 16th Street Mall are private property.

During the arrest and citation of Mr. Weiland, the officer asked Mr. Weiland and other members of the group whether or not they planned on engaging in such First Amendment activity during the Democratic National Convention. As documented in the video taken of the incident, the officers stated that Mr. Weiland and the other members of the group should have “researched the law” before attempting to engage in their First Amendment activity, and that had they done so, they would have known they had to first obtain a peddler’s permit to distribute their free materials.

It is likely that during the Democratic National Convention, many people will wish to engage in First Amendment activity on Denver’s public areas including, but not limited to, sidewalks and the 16th Street Mall. As the video makes clear, of the numerous officers at the scene, all the officers agreed (or if they disagreed, did not correct the erroneous statements of their fellow DPD officers) that a “peddler’s license” was needed to distribute free literature on the mall sidewalks, and that the 16th Street Mall was “private property.” As a consequence of those

¹ <http://www.youtube.com/watch?v=Wo7mZKyKAWA>

² Even if Mr. Weiland were engaged in peddling, which he was clearly not, this section appears to not even be applicable to peddling on the 16th Street Mall. See D.R.M.C. § Sec. 49-549.7.

misperceptions, DPD officers arrested and cited Mr. Weiland for engaging in speech protected by the First Amendment and Article II Section 10 is of even more disconcerting.

In anticipation of the Democratic National Convention, we request that Denver provide additional instruction and training to its officers regarding the First Amendment protections afforded to persons demonstrating in public forums including the 16th Street Mall. In addition, as you know, the D.R.M.C. was recently revised to permit a broader range of First Amendment activity in Denver. For example:

- The former version of the code purported to require a single person in a public park expressing their views to obtain a permit to do so. The revised version of this code makes clear that no permit is required for any group less than fifty persons. See D.M.R.C. § 39-76(a).
- The revised code also makes clear that no permit at all is required in instances where it is not “reasonably possible to obtain a permit in advance of a short notice activity.” See D.M.R.C. § 39-85.
- The former version of the code purported to criminalize “offensive” conduct or “loud and unusual” noises in public parks. The revised version of the code restricts the prohibition and criminal sanction only to actions “calculated to provoke a breach of the peace.” See D.M.R.C. § 39-12.
- The revised code creates new guidelines and procedures for the limited instances in which public assembly permits can be revoked. See D.M.R.C. § 39-80.

In advance of the Democratic National Convention, we request that the Denver Police Department issue a training bulletin to all its officers correcting the misunderstandings that resulted in the arrest of Mr. Weiland, and that makes clear the protections and time, place and manner limits on First Amendment activity in Denver’s traditional public fora. Such a training bulletin could help to minimize, if not eliminate, the possibility that DPD officers will continue to misinterpret the law and make additional wrongful arrests like that of Mr. Weiland. If you are agreeable, the ACLU of Colorado would be happy to provide comments and feedback on drafts of any training bulletin, similar to our cooperative effort with the revision of the parks and parade permitting ordinances.

Alternatively, if Denver believes that First Amendment activity on the 16th Street Mall requires a permit, and/or that the mall is private property, please explain that understanding to us. If we do not hear from you in response to this letter, we will assume that the officers who arrested Mr. Weiland were acting pursuant to and consistent with Denver policy, and that if Mr. Weiland or any other person

engages in similar expressive activity on the 16th Street Mall in the future, they will be arrested and cited.

Thank you for your consideration of this matter. If I can provide any more information, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "T. Pendergrass". The signature is stylized with a large, sweeping initial "T" and a long horizontal stroke extending to the right.

Taylor Pendergrass
Staff Attorney, ACLU of Colorado

Enc. General Sessions Summons and Complaint

cc. Weiland