

THE
ROGER
BALDWIN
FOUNDATION
OF ACLU,
INC.

150 N MICHIGAN AVE STE 600
CHICAGO IL 60601-7570
T: 312-201-9740
F: 312-288-5225
WWW.ACLU-IL.ORG



February 12, 2018

Via Electronic Mail

Richard Veenstra
City of Aurora
Corporation Counsel
44 E Downer Place
Aurora, IL 60505
rveenstra@aurora-il.org

Dear Mr. Veenstra:

I write regarding Indivisible Aurora's parade permit application, which is scheduled for a vote at the February 13 Government Operations Committee meeting. Recent events raise the possibility that the Committee might deny the permit or impose onerous requirements based on the content of the parade or the identity of its participants. I ask that you instruct your clients that any such discrimination would violate the First Amendment.

Moreover, Aurora's parade permit ordinance is unconstitutional on its face because it lacks any safeguards to prevent content-based discrimination. The ordinance must be amended at the earliest opportunity.

1. The Indivisible Aurora application

Indivisible Aurora submitted its application for a parade permit on November 15, 2017. It is my understanding that certain clergy in the community have expressed "concerns" about the "appropriateness" of the event based on stereotypes about LGBTQ people. To accommodate these concerns, the vote on the permit was delayed, and committee chair Scheketa Hart-Burns asked Indivisible Aurora to attend a meeting with the concerned clergy.

Members of the public have a right to express their views on any pending government action, including a parade permit. But when those views relate to assumptions about the content of speech or the identity of the speakers, the City may not take those views into account in making permit decisions. Nor may the City impose additional procedural hurdles on applicants based on such views.

It is my understanding that the police have expressed confidence in the department's ability to police the parade and manage logistics, on the proposed date. Accordingly, the permit

must be granted on February 13, and the Committee must not attach any conditions – such as fees, route restrictions, or date limitations – based on the parade’s content.

2. The Aurora ordinance

Aurora’s ordinance on parade permits, Code Sec. 27-7, fails to meet minimum First Amendment standards. The ordinance states, in full:

No open air meeting, procession or parade containing one hundred (100) or more persons or twenty-five (25) or more vehicles, except the forces of the United States Army or Navy, the military forces of this state and the forces of the police and fire departments, shall occupy, march or proceed along any street or public way or any ground abutting same except in accordance with a permit issued by approval of the government operations committee of the city council after review by the police chief and such other regulations as are set forth in this chapter.

Laws that require a permit for parades or assemblies on public property must have certain basic protections to ensure that the First Amendment is observed. These include:

- Narrow, objective, and content-neutral criteria for the grant or denial of a permit, and for any fees or restrictions applied to the permit;
- Deadline for the grant or denial of a permit, and a requirement that the reasons for a denial be set forth in writing;
- Avenue to appeal the denial of a permit; and
- Exemption to the permit requirement for spontaneous demonstrations in response to current events.

The Aurora ordinance lacks any of these protections, raising the possibility permit applications may be denied because of the content of speech or other impermissible reasons. This danger is compounded because the decision-maker is a city council committee that is highly subject to political considerations, instead of a neutral administrator.

In addition to the unconstitutional ordinance, the parade permit application imposes unconstitutional requirements on applicants. It is not clear who promulgated these requirements and under what authority, since the ordinance does not allow for them. The unconstitutional provisions include:

- Requirement that application be submitted 90 days before the event. The application deadline cannot be earlier than is reasonably necessary to allow the City time to process the application and prepare for the event.
- Insurance requirement. In order to be constitutional, an insurance requirement must have (1) clear, content-neutral criteria for determining the amount of insurance; (2) an exemption when the insurance requirement is prohibitively expensive for the organizers; and (3) an exemption when the organizers try but are unable to obtain insurance.

- Permitted use of public property. The application requires the organizer to agree to “provide for the repair, replacement or maintenance of any damaged, lost or stolen portions of the subject property.” A parade organizer may not be held liable for acts that he did not direct, encourage, or commit.

The ordinance must be amended as soon as possible to include appropriate First Amendment safeguards and clear authority for the promulgation of any additional regulations.

3. Freedom of Information Act request

Finally, pursuant to the Illinois Freedom of Information Act, I request that you provide me all records pertaining to Indivisible Aurora’s parade permit application, including but not limited to all communications to or from any alderman, city official, or city employee. As you know the FOIA requires a response within five working days.

Should you wish to discuss this matter further, please do not hesitate to contact me at 312-201-9740 ext. 316 or rglenberg@aclu-il.org. Thank you for your attention to this matter.

Sincerely,



Rebecca K. Glenberg
Senior Staff Attorney

cc: Jennifer Jordan, Executive Secretary, jjordan@aurora-il.org