

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

INTERNATIONAL WOMEN'S DAY §
MARCH PLANNING COMMITTEE, AN §
UNINCORPORATED ASSOCIATION, §
AND SAN ANTONIO FREE SPEECH §
COALITION, AN UNINCORPORATED §
ASSOCIATION, §
Plaintiffs §

v. §

SA-07-CA-0971-XR

CITY OF SAN ANTONIO, §
Defendant §

DEFENDANT CITY OF SAN ANTONIO'S REPLY TO PLAINTIFFS' RESPONSE TO MOTION TO DISSOLVE PRELIMINARY INJUNCTION

TO THE HONORABLE XAVIER RODRIGUEZ:

NOW COMES CITY OF SAN ANTONIO, DEFENDANT in the above styled and numbered cause, and files this its Reply to Plaintiffs' Response to Defendant's Motion to Dissolve Preliminary Injunction, and by way of reply would show unto the Court as follows:

1. On or about June 23, 2008, Defendant City of San Antonio filed its Motion to Dissolve Preliminary Injunction. On or about August 27, 2008, Plaintiffs filed their "Memorandum of Opposition" to that Motion (Dk. # 62) Simultaneously, and relying on the same Memorandum, Plaintiffs moved to Modify the Existing Preliminary Injunction or for Entry of a Second Preliminary Injunction.

2. Plaintiffs have failed to controvert Defendant's arguments set forth in its Motion to Dissolve. This is because Defendant has addressed all of the concerns raised by this Court and as such the basis for the Preliminary Injunction no longer exists. In fact, the only issue previously raised by the Court as a basis for injunctive relief that is in anyway addressed by Plaintiffs is the question of whether or not the ordinance granted too much discretion in the chief

of police. In order to address this concern, Defendant amended the ordinance to address factors that are to be considered in determining the numbers of officers and/or traffic control devices for any event. The ordinance further required the Chief or his designee to create policies and procedures concerning such determinations – which the department has done.

3. In response to Defendant’s Motion to Dissolve, Plaintiffs contend that the revised Ordinance (hereinafter “2008 Ordinance”) fails to “articulate narrow, objective and definite standards to guide the determination of cost shifting fees to be imposed on the permittee.” (Dk. # 62, p. 5-9) In support of this contention, Plaintiffs first attack the revised ordinance, alleging that since it does not address each question that Plaintiffs can think up, it is not sufficiently definite. Among other things, Plaintiffs contend that, although the 2008 Ordinance does set forth factors to be considered in determining the number of officers and devices to be used, since it does not set forth every possible factor to be considered, it is deficient. Plaintiffs offer no authority for the proposition that an ordinance seeking to balance a government entity’s interests against the right of free speech must address each and every conceivable question that an individual may have. The question at bar is whether the 2008 Ordinance provides narrow, objective and definite standards to guide the licensing authority. The answer is yes, it does. The ordinance limits cost recovery to traffic costs, and provides factors to be considered in determining the necessary traffic controls.

4. Plaintiffs also attack the Standard Operating Procedures adopted by the Department. The SOPs were developed as a guide. Plaintiffs take issue with the fact that the SOPs provide five examples of types of events and suggested staffing for such events. (Dk. # 62, p. 7-8) Plaintiffs challenge these examples as not providing specific guidance. Plaintiffs miss the fact that these are examples. As noted by this Court in the order issuing the preliminary injuncton, to set forth

specific, rigid formulas would have the affect of infringing on constitutional rights by the lack of flexibility. (Dk. #38, fn. 33)

5. Plaintiffs next take issue with the SOPs on the contention that they do not take into consideration the length of time that march participants will be in the streets. Plaintiff asserts that this is a “critical” factor under the Texas Manual on Uniform Traffic Control Devices. Plaintiffs also assert, without any specific citation to authority, that the Defendant is “required to comply” with the TMUTCD. This is incorrect. The Texas Transportation Code provides discretionary authority to a local authority to place and maintain a traffic control device on a highway under its jurisdiction and requires only that the device must conform to the manual and specifications of the TMUTCD. Tex. Trans. Code Section 544.002(b)¹ Regarding the issue of the length of time, the factors set forth in both the 2008 Ordinance and the SOPs clearly encompass this information. The factors listed include the number of participants and the length of the event. Both of these factors play into a determination of necessary traffic control.

6. Finally, Plaintiffs take issue with the testimony of Lt. Charles O’Dell indicating that the Defendant would be flexible in considering the needs of each event.² This testimony is again in line with the Court’s notation in its order regarding the necessity for discretion and flexibility. Such limited discretion plays to the benefit of event organizers, preventing them from being boxed in and overcharged through the use of pre-set formulas.

7. The balance of Plaintiffs’ Memorandum address arguments not previously presented to this Court at the time the prior Preliminary Injunction was issued, or arguments that have already been addressed by this Court in favor of Defendant. As such, Defendant will address those

¹ Contrary to Plaintiffs assertions, there is nothing in state or local law that requires a local authority to comply with the TMUTCD in any thing other than the design of the traffic control device. As with the Transportation Code, Plaintiffs give no specific cite to any provision of the TMUTCD upon which they rely. The TMUTCD, a voluminous document, can be found online at www.dot.state.tx.us/publications/traffic.htm.

² Although Plaintiffs cite to Lt. O’Dell’s deposition, they failed to attach a copy or to provide a complete citation.
Def. CoSA’s Reply to Resp. to Mt. to Dissolve
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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system that will send notification of such filing to the following:

Amy H. Kastely
405 N. St. Mary's, Suite 110
San Antonio, Texas 78212

_____/s/_____
DEBORAH LYNNE KLEIN