

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF FLORIDA
NORTHERN DISTRICT**

SAINT FAUSTINA OLD CATHOLIC CHURCH,	:	Case No.
	:	
Plaintiff,	:	Judge:
	:	
-vs-	:	
	:	
CITY OF PENSACOLA; CITY MANAGER AL COBY, in his individual capacity,	:	JURY TRIAL REQUESTED
	:	
Defendants.	:	

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT,
PRELIMINARY AND PERMANENT INJUNCTIONS, AND DAMAGES**

Plaintiff St. Faustina Old Catholic Church (“Church”), by and through counsel, makes this Complaint against Defendants as follows:

1. This is a civil rights action seeking declaratory judgment, preliminary and permanent injunctive relief, and damages against the City of Pensacola and City Manager Al Coby (collectively, the “City”). The City has a policy regulating access to Plaza Ferdinand VII (the “Park”) that is both unconstitutional on its face and as it has been applied to deny the Church access to the Park.

2. The City’s denial of the Church’s access to the Park violates the Church’s First Amendment rights to free association and speech in a traditional public forum and to free exercise of religion. The City’s action is also a violation of the Church’s Fourteenth Amendment rights to due process and equal protection under law.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations made under color of state law of rights, privileges, and immunities secured by the United States Constitution; under 28 U.S.C. § 1367(a), in that the state law claim raised is so related to the federal claims that it forms part of the same case or controversy; under 28 U.S.C. § 1343(a)(4), in that it seeks to recover damages and secure equitable relief under an Act of Congress, specifically 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights; under 42 U.S.C. § 1988(b) to award attorneys fees; under 28 U.S.C. § 2201(a) to secure declaratory relief; and under 28 U.S.C. § 2202 to secure preliminary and permanent injunctive relief.

4. Venue is proper in the United States District Court for the Northern District of Florida under 28 U.S.C. § 1391(b), because the events giving rise to the claim occurred within the District and because the Defendants are residents of or located in the District.

PARTIES

5. Plaintiff St. Faustina Old Catholic Church is a non-profit organization that exists for religious, charitable, and educational purposes. The Church is a part of the Diocese of Saint Patrick.

6. Defendant City of Pensacola is the governmental body that owns, regulates, and maintains the Park.

7. Defendant Al Coby is the City Manager for the City of Pensacola. He is the City's final policy maker regarding use of the Park and is sued in his individual capacity. It was pursuant to his direction that the City police denied the Church access to the Park.

FACTS

8. Plaza Ferdinand VII is a public park located in the heart of downtown Pensacola. It has been a public meeting place since before the founding of the United States, originally created as a meeting square by the Spanish government in the 1700s.

9. The City owns, regulates, and maintains the Park and allows it to be used for both general public access and for a wide variety of events, including a February gathering of over 2000 people in a reception for visiting Spanish monarchy.

10. Vendors also use the Park over the Christmas and New Year holidays to sell items, and religious groups use it over the summer months as a meeting location.

11. Nathan Monk is the pastor of Saint Faustina Old Catholic Church and is authorized to act on its behalf.

12. The Church holds a weekly Thursday night Bible study at its building in downtown Pensacola. The study is held for fellowship, study of the Bible, and prayer.

13. Over time, the Bible study members, led by Fr. Monk, decided that they would like to begin meeting at the Park as a part of their meetings for a weekly picnic, returning to their nearby church building afterwards for the formal Bible study.

14. The choice to meet there was based on the Church members' religiously-motivated desire to live out the things they are learning in their Bible studies, particularly by reaching out to their local community.

15. Accordingly, when the Church meets at the Park for a picnic, the Church members offer to share their food with any people who happen to be at the Park.

16. The Church members engage in this conduct to express a message to the public, particularly to needy members of the public, that God loves and values them.

17. The picnics include a short time of prayer and brief religious remarks by Fr. Monk.

18. The Church chose the Park as their meeting location for a variety of reasons. Practically speaking, the Park is the closest public park to the Church's building.

19. Also, as compared to other nearby parks, the Park attracts not only more people as a general rule, it also attracts the types of people who are more likely to appreciate and respond to the Church's outreach, particularly the many individual casual pedestrians who walk through the Park and some of the City's needy from a nearby rescue mission.

20. Other city parks, like Seville Square, are located in residential neighborhoods less likely to be frequented by either casual pedestrians or needy people.

21. Symbolically, the Park is a central, visible part of the City and the Church believes that their ministry there communicates the importance and societal significance of the people to whom they minister.

22. The Church also believes that the City's eviction of the Church is symbolic of its desire to marginalize it and other ministries like it, pushing them into more invisible parts of the City.

23. While the picnics started out with only a few people in attendance, they have grown to fluctuate between roughly 20 and 30 participants, about half of whom are Church members and half of whom are members of the public from the Park.

24. The Church had been meeting weekly for Thursday-night picnics at the Park for about 10 weeks when the City required the Church to discontinue meeting at the Park.

25. This occurred on or about Thursday, February 26th, 2009, when Pensacola Police Officer Jay told Fr. Monk that City Manager Coby had determined that the Park is a "non-event park" and, accordingly, the Church could no longer hold its picnics there.

26. Officer Jay informed Fr. Monk that the picnics could be moved to two other public parks. One of the parks suggested by the City for the Church's picnics is located in a high-crime area under a highway overpass and the other is nearby a sewage plant.

27. Neither alternative park location is a suitable location for a church picnic.

28. There are no ordinances in the Pensacola Code that declare either the Park or any other City park to be "non-event parks."

29. Officer Jay did not explain what an "event" was and how that differed from other, allowable uses of the Park.

30. Further, Officer Jay did not say that the Church could apply for a permit to use the Park; he just said the Church was not allowed to have access to it.

31. Pursuant to Officer Jay's order, the Church is no longer holding picnics at the Park.

32. In an attempt to resolve this matter quickly and without litigation, the Church sent Defendant Coby a letter through counsel on March 6 explaining that the City's action against the Church was unconstitutional.

33. The letter requested that the City respond by March 18.

34. As of the filing of this Complaint, Defendant Coby has never responded to the Church's request. The letter is attached to this Complaint as Exhibit 1.

35. On March 20th, in a continued attempt to avoid litigation, the Church contacted the City's legal counsel, City Attorney William Wells, and provided him with a copy of the Church's letter to the City.

36. Mr. Wells informed the Church that he had never been consulted regarding the issue and that, if given a reasonable period of time, he would provide the City's final position regarding the Church's request.

37. Three weeks later, on April 9th, Mr. Wells wrote the Church and explained that use of the Park was “heavily restricted” in order to maintain the Park’s grass, and that these restrictions are more strictly enforced during the winter months because of the grass’s increased fragility. Mr. Wells’ correspondence to the Church is attached as Exhibit 2.

38. Mr. Wells attached a Committee Memorandum from a 1987 meeting of the Pensacola City Council, which he identified as the policy the City uses to govern access to the Park. The Committee Memorandum (“Policy”) is attached as Exhibit 3.

39. The Policy was written to address a single use request for the Park and it was approved by the City Council on a “one time trial basis.” Ex. 3 at 4. The City has since adopted the Policy as its official policy for Park access. Ex. 2.

40. The Policy only allows Park access for “limited impact events,” which it defines as “those events which are scheduled for one-half day or less and are projected to attract less than 5,000 participants.”

41. Groups of less than 5,000 accessing the Park are required to pay a non-refundable user fee of \$250 per use and pay bonds of \$500 for clean-up and \$25,000 for damage.

42. While the collected fees are deposited in a Park maintenance fund, there is no finding or statement in the Policy suggesting those fees are reasonably related to actual impact on the Park from a particular Park use.

43. In fact, the Policy does not limit its application to any particular event size under 5,000. Facially, it is just as applicable to one-person events as it is to those of 4,999 people.

44. Also, the Policy does nothing to limit non-event uses of the Park, allowing any number of people to access the Park, and trample on the Park’s grass, as long as they do not “schedule” their Park usage ahead of time.

45. Finally, the Policy is completely silent on the application process for permits to use the Park.

46. There is no description in the Policy of the advance notice applicants must give the City, no limitation on the time period for City officials to respond to applications, and no objective and narrow standards limiting official discretion in the award of permits to use the Park.

47. The Church has never held any of its picnics on the grass or conducted any other activities on the grass; instead, its picnics were held on park benches located in the large concreted area at the center of the Park.

48. Since several concrete sidewalks all around the Park lead to this central meeting location, Church members never were required to walk on the grass to access the picnics.

49. Further, Officer Jay never mentioned concerns about the grass when ordering the Church not to meet in the Park, and there are no Park signs warning users not to walk on the grass.

STATEMENTS OF LAW

50. All of the City's acts alleged herein were committed and continue to be committed under the color of state law by the City, its officers, agents, servants, employees, or persons acting at its behest or direction.

51. The Church has suffered and is suffering irreparable harm to its First and Fourteenth Amendment rights as result of being discriminatorily barred from accessing the Park, a traditional public forum.

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**FIRST CAUSE OF ACTION
VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
FREEDOM OF SPEECH**

52. The Church hereby incorporates by reference all foregoing allegations as if set forth fully herein.

53. Religious speech, including the Church's, is protected by the Free Speech Clause of the First Amendment.

54. The Park has been available for public use for centuries and, as a public park, is the quintessential example of a traditional public forum.

55. The City has and continues to keep the Park generally available to the public for a wide variety of free speech activities.

56. The City's Policy is an impermissible prior restraint on the Church's desired religiously expressive use of the Park.

57. The Policy fails to include many of the constitutionally required safeguards for a permit scheme. Most egregiously, it has no limit on official discretion on whether to award a permit at all.

58. The Church's experience trying to use the Park demonstrates the broad latitude City officials have in regulating use of the Park under the Policy.

59. For instance, Officer Jay, speaking on behalf of Defendant Coby, simply stated that the Park was a "non-event" park and the Church could not use it; he never said that the Church could apply for a permit to use the Park. In fact, the City, even in providing the Church a copy of its Policy for Park use, has still not stated the Church could apply for Park use; it has simply said that the Church can use other City parks. Ex. 2.

60. Also, Mr. Wells stated that the Policy is more strictly enforced at certain times of the year. Ex. 2.

61. The Policy is not narrowly tailored to serve its purported governmental interest in protecting grass as it is both underinclusive and overinclusive. It is underinclusive because it does not prohibit other Park use activities that have at least as much impact on Park grass as do the Church's picnics, and it is overinclusive because it prohibits uses of the Park that have no impact on Park grass.

62. The Policy's substantial fee and bond requirements are entirely unrelated to actual costs or impacts generated by actual use of the Park. This is particularly clear since the same fees and bonds are imposed for events attracting 4,999 people as for events attracting one person.

63. The City's enforcement of its Policy against the Church discriminatorily restrains constitutionally protected speech.

64. The City's Policy has a substantial chilling effect on the free speech rights of the Church and others not before this Court.

65. As such, the City's policy, and its enforcement of that policy against the Church, violates the Free Speech Clause of the First Amendment to the United States Constitution, made applicable to state and local governments through the Fourteenth Amendment.

**SECOND CAUSE OF ACTION
VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
FREEDOM OF ASSOCIATION**

66. The Church hereby incorporates by reference all foregoing allegations as if set forth fully herein.

67. The Church desires to gather together with its members to share their food and their religious faith with those members of the community who happen to be visiting the Park.

68. This desire is motivated by the Church's religious beliefs, particularly its belief that all members of the community are important to God and deserve both respect and kindness.

69. The City's action has prevented the Church and its members from being able to associate with members of the community in the Park.

70. Accordingly, the City's action has violated the implied First Amendment right to associate for the purpose of engaging in protected First Amendment activities like expression and the free exercise of religion.

71. The City has no compelling reason that justifies infringing the Church's right to free association in a generally available public facility.

72. As such, the City's policy, and enforcement of it against the Church, violates the right of free association protected by the First Amendment to the United States Constitution, made applicable to state and local governments through the Fourteenth Amendment.

**THIRD CAUSE OF ACTION
VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
FREE EXERCISE OF RELIGION**

73. The Church hereby incorporates by reference all foregoing allegations as if set forth fully herein.

74. The Church desires to gather with its members and others at the Park to engage in religious expression and activity that is motivated by its sincerely-held religious beliefs.

75. The Park is a traditional public forum and the City has intentionally and continuously made it available to the public for a wide variety of activities.

76. The City's Policy, and its enforcement of it against the Church, selectively burdens the Church's religious exercise by restricting its access to a generally available public facility.

77. The City's enforcement of its Policy has not been neutral and generally applicable, as it has discriminatorily enforced its policy against the Church, allowing continued general public access to the Park while denying the Church that same level of access.

78. The City has no compelling reason that justifies denying the Church equal access to a generally available public facility.

79. As such, the City's policy, and enforcement of it against the Church, violates the Free Exercise Clause of the First Amendment to the United States Constitution, made applicable to state and local governments through the Fourteenth Amendment.

**FOURTH CAUSE OF ACTION
VIOLATION OF THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION
DUE PROCESS**

80. The Church hereby incorporates by reference all foregoing allegations as if set forth fully herein.

81. The City's Policy, on its face and as applied to the Church, requires persons of common intelligence to guess its meaning, scope, and application.

82. The Policy lacks any objective standards to cabin the discretion of City officials and employees charged with enforcing them.

83. The Policy allows the City to enforce it in an *ad hoc* and discriminatory manner.

84. The City has no compelling reason that justifies its refusal to grant the Church equal access to the Park.

85. As such, the City's policy, and its enforcement against the Church, violates the Due Process Clause of the Fourteenth Amendment.

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**FIFTH CAUSE OF ACTION
VIOLATION OF THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION
EQUAL PROTECTION**

86. The Church hereby incorporates by reference all foregoing allegations as if set forth fully herein.

87. The Equal Protection Clause of the Fourteenth Amendment requires the government to treat similarly-situated persons equally.

88. The City's enforcement of the Policy gives similarly-situated organizations access to the Park while denying equal access to the Church.

89. By the treating the Church in a discriminatory manner, the City has intruded on the Church's fundamental constitutional rights.

90. The City has no compelling reason that justifies its discrimination against the Church.

91. As such, the City's Policy, and its enforcement against the Church, violates the Due Process Clause of the Fourteenth Amendment.

**SIXTH CAUSE OF ACTION
VIOLATION OF THE FLORIDA RELIGIOUS FREEDOM RESTORATION ACT
F.S.A. § 761**

92. The Church hereby incorporates all foregoing allegations as if set forth fully herein.

93. The City's Policy and its enforcement of it preventing the Church from meeting in the Park to engage in religious activities substantially burdens the free exercise of the Church's religion.

94. The City's reason for preventing the Church from meeting in the Park—protection of the Park grass—is not a compelling interest.

95. The City's means of protecting Park grass is not the least restrictive means to further that interest.

96. As such, the City's Policy, and its enforcement against the Church, violates the Florida Religious Freedom Restoration Act.

WHEREFORE, Plaintiff prays for judgment against the City and that the Court:

- A. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter and claims in controversy in order that such declarations shall have the force and effect of final judgment and that the Court retain jurisdiction of this matter for the purpose of enforcing the Court's Orders;
- B. Pursuant to 28 U.S.C. §2201, declare that the City's laws, policies and practices, as alleged above, violate the First and Fourteenth Amendments to the United States Constitution;
- C. Pursuant to 28 U.S.C. §2202, Fed. R. Civ. P. 65, and 42 U.S.C. §1983, preliminarily and permanently enjoin the City from enforcing its unconstitutional policies and practices against the Church and others similarly situated;
- D. Pursuant to 42 U.S.C. §1988, F.S.A. §761.04, and other applicable law, award the Church its costs and expenses incurred in bringing this action, including its reasonable attorneys' fees;
- E. Award the Church compensatory and/or nominal damages for the damages suffered in violation of federal law in an amount to be determined by a jury; and
- F. Grant such other and further relief as the Court deems equitable, just and proper.

Respectfully submitted this 23rd day of April, 2009,

/s/ Erik Stanley

Erik Stanley
FL Bar No. 0183504
Daniel Blomberg*
KS Bar No. 23723
ALLIANCE DEFENSE FUND
15192 Rosewood
Leawood, KS 66226
Telephone: (913) 685-8000
Facsimile: (913) 685-8001
Email:
estanley@telladf.org
dblomberg@telladf.org
Counsel for Plaintiff

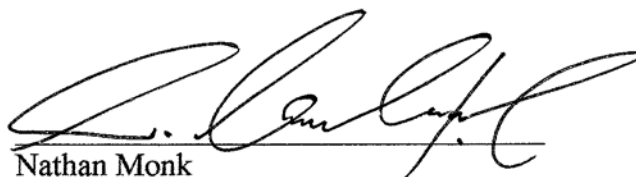
Mark Welton (local counsel)
FL Bar No. 999202
WELTON & WILLIAMSON, LLC
1020 South Ferdon Blvd.
Crestview, FL 32536
Telephone: (850) 682-2120
Facsimile: (850) 689-0706
Email: mark@welwill.com
Counsel for Plaintiff

Benjamin W. Bull (of counsel)
ALLIANCE DEFENSE FUND
15100 N. 90th Street
Scottsdale, AZ 85260
Telephone: (480) 444-0020
Facsimile: (480) 444-0028
Email: bbull@telladf.org
Counsel for Plaintiff

**Pro hac vice application pending*

VERIFICATION

On this the 21st day of April, 2009, I, Nathan Monk, pursuant to 28 U.S.C. § 1746, declare that I have read the foregoing Verified Complaint, and the same is true to my own knowledge. With respect to matters of law, I have relied upon the advice of counsel.



Nathan Monk

March 6, 2009

Al Coby
City Manager, City of Pensacola
180 Governmental Center, 7th Floor
P.O. Box 12910
Pensacola, FL 32521

VIA Facsimile (850-435-1611) and UPS (Guaranteed for Next Day Delivery)

RE: Unconstitutional Closing of Plaza Ferdinand VII to Church Groups

Dear City Manager Coby,

Our client, Reverend Nathan Monk of St. Faustina Old Catholic Church (the “Church”), has been informed by Pensacola Police officers that his Church must cease holding picnics at Plaza Ferdinand VII because you have determined that this park is a “non-event” park. This determination directly violates the Church’s First Amendment right to free speech and its Fourteenth Amendment rights to equal protection under the law. Accordingly, we are writing you to urge you to rescind this policy by Monday, March 16, to avoid requiring the Church to litigate to defend its rights.

By way of introduction, the Alliance Defense Fund (“ADF”) is a non-profit legal and educational organization that seeks to educate government officials and others on the subject of constitutional rights, particularly under the First Amendment. When necessary, we do proceed to litigation to protect First Amendment rights.

RELEVANT FACTS

Plaza Ferdinand VII (the “Park”) has been a National Historic Location since 1966 and is located in the heart of the historic district of Pensacola. It has been a public park since 1764, when it was originally designed as a public square. The Park is open to the public and has been used to host several events in recent months, including a reception for the King of Spain on February 19th that attracted over 2000 people. The Park was also recently used by vendors during both the New Years and Christmas holidays. Church groups regularly meet there during the summer for prayer meetings.

For about ten weeks, the Church has been meeting at the Park on Thursday nights to hold a church picnic. The Church has made these picnics open to the public, allowing the community to participate in the food and fellowship without any charge. The purpose of the picnic is simply to provide an informal opportunity for the Church to fellowship with its members and to minister to the community. The Church has made a point of respecting the Park and has a team of Church members clean up not only the trash from the picnic but also any other nearby trash in the park. Also, the Church has worked to ensure that the picnics do not generate too much noise or otherwise disrupt the Park. Pensacola Police Officer Jay, who delivered the city's command to the Church that they can no longer meet at the Park, specifically noted that no complaints have been made about litter or noise from the Church's picnics.

On or about Thursday, February 26th, Officer Jay approached Rev. Monk and told him that the city had determined that the Park is a "non-event" park and that, accordingly, the Church would no longer be able to have picnics there. Officer Jay specifically cited you, Mr. Coby, as the source of this determination. Officer Jay said that the Church could meet at the Park for a couple more weeks, in order to inform community members that these would be the last picnics at the Park, but that the Church would no longer be able to meet at the Park afterwards.

There are no ordinances in the Pensacola Code which declare either the Park or any other city park to be "non-event" parks. Officer Jay did not explain what an "event" was and how that differed from other informal public uses of the Park.

RELEVANT LAW

Public places are generally categorized into three categories for First Amendment purposes: traditional public fora, limited public fora, and nonpublic fora. The traditional public forum is one that by long tradition or by government fiat has been devoted to public assembly and debate. *Perry Educ. Assn v. Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983). Public parks are indisputably traditional public fora. *Id.*; *Cornelius v. NAACP Legal Defense*, 473 U.S. 788 (1985). "[T]ime out of mind," public parks "have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. CIO*, 307 U.S. 496, 515 (1939). "Speech finds its greatest protection in traditional public fora, and government may not alter their public status without completely changing the fora's use, e.g., converting a public park to an office building." *Snowden v. Town of Bay Harbor Islands, FL*, 358 F.Supp.2d 1178, 1191 (S.D. Fla 2004). Any regulations government puts on the expressive use of these forums must be based on a compelling interest and must be narrowly tailored to that interest. *Perry Educ. Ass'n*, 460 U.S. 37 at 45.

The Park has been a public park since before the founding of the United States and has kept its public character throughout; it is clearly a traditional public forum. Pensacola has done

nothing to alter the Park's essentially public nature, meaning that it cannot now attempt to selectively remove public access to the park. Further, because the Park is regularly used for other events—events which are much larger and more burdensome on the use of the park—no compelling interest can be said to support the city's attempt to prevent the Church from holding small, unobtrusive picnics there. Thus, the city's action against the Church—action which has no support in the Pensacola Code—is a violation of the Church's First Amendment rights.

Further, since the Park is regularly and demonstrably used for events that are open to the public, the city's attempt to shut out the Church is a violation of the Fourteenth Amendment's guarantee of equal protection under law. The Equal Protection Clause is "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985). Since the Park is both generally open to the public, including informal public gatherings like the Church's, and is open to large-scale events on a regular basis, the Church is being discriminated against by the city's policy. Accordingly, the Church's Fourteenth Amendment right to equal protection is being violated.

CONCLUSION

Pensacola's attempt to keep the Church from using a public park is, as we have explained it above, clearly unconstitutional. We hope that Pensacola will recognize this problem and fix it immediately to avoid any further violation of the Church's rights. The Church desires to continue meeting at the Park and looks forward to a voluntary change in Pensacola's policy for use of the Park. However, if Pensacola refuses to change its policy by 5:00 PM, EST, on Wednesday, March 18, ADF will commence litigation to protect the Church's First and Fourteenth Amendment rights.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Daniel Blomberg
Litigation Counsel
ALLIANCE DEFENSE FUND
15192 Rosewood
Leawood, KS 66224
Phone: 913-685-8000
E-Mail: dblomberg@telladf.org

the protective measures the City has taken to protect this park.

Again, thanks for allowing me time to look into this and get back to you.

The cc'd recipients referenced are the City Manager, the Parks Director, and my assistant.

Thanks again.

Rusty Wells

WILLIAM D. WELLS
City Attorney
City of Pensacola
P.O. Box 12910
Pensacola, Florida 32521
Telephone: (850) 435-1615
Fax: (850) 595-1290
email: rwells@ci.pensacola.fl.us

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COMMITTEE MEMORANDUM

COMMITTEE: Committee of the Whole
DATE: September 24, 1987
SUBJECT: Use Request--Plaza Ferdinand

Issue:

Upon completion of the renovation of Plaza Ferdinand, City Council established a policy of locating all special events in the Seville Square area and limiting Plaza Ferdinand to passive uses. This was done to protect the grass, plantings, and walkways from damage caused by "high intensity" uses.

Attached is a request from the Downtown Improvement Board (DIB) to conduct an organized but "low intensity" event in the Plaza on October 16, 1987. City staff members, including the City Manager, have reviewed this request and have developed five criteria which are intended to protect our substantial investment in the Plaza. We believe that, if City Council imposes these five criteria, limited and "low intensity" use of the Plaza may be acceptable.

1. Pay clean-up bond of \$500 as currently required in the special events ordinance.
2. Post damage bond in the amount of \$25,000.
3. Pay user fee in the amount of \$250 (non-refundable) to be deposited in a Plaza Ferdinand maintenance fund to be used to repair cumulative damage of the park.
4. Limited impact events are those which do not include:
 - a) Vendors;
 - b) Booths;
 - c) Stages;
 - d) Exhibits;
 - e) Utility hook-up requirements;
 - f) Bands staged within the perimeter of the park;
 - g) Other activities determined to be "high impact" activities by the City.
5. Limited impact events are those events which are scheduled for one-half day or less and are projected to attract less than 5,000 participants.

From: Rusty Wells
To: Daniel Blomberg;
cc: Al Coby; David Flaherty;
Janet Matteson;
Subject: FW: Scanned Documents
Date: Thursday, April 09, 2009 10:55:15 AM
Attachments: Unsaved.pdf

Good morning, Daniel, and thank you again for your patience in letting me get back to you.

The attachment is a copy of the 1987 policy of the Pensacola City Council that pertains to this particular park. I realize that you are unfamiliar with our city and this park, but in order for you to assess the restrictions on its use, you need to have some information. The City has scores of parks that are open all the time and virtually unrestricted in public use. Within 2-3 blocks of Plaza Ferdinand, there are 4 other parks equal in size or larger that do not have this level of restriction on use. The other parks are intended and are in fact used for large gatherings of people and events throughout the year. Plaza Ferdinand is one small block square with a sidewalk and 3' wall perimeter, criss-crossed by a sidewalk with benches, and heavily treed and shaded. The trees and constant shade create great fragility for maintaining grass, and so large gatherings of people and events are greatly restricted, and even the more so in seasons where grass is not growing or regenerating at all. This is the reason that this park is more heavily restricted in use than the others throughout the city.

We are not at all opposed to your clients enjoying the city's parks and using them in the manner you have described - and there are several alternative sites available just 2 short blocks away. We would welcome an opportunity to confer with you over working out an alternative to using Plaza Ferdinand, as we have done on several occasions in the past when other groups were wanting to assist in feeding or conferring with the public in public places.

If you will carefully examine the attachments and work with us to learn more about the alternatives that are available and the assistance the City can render to you, I believe you will find that our restriction on this one park fully complies with the kinds of content-neutral restrictions approved by the United States Supreme Court in *Thomas v. Chicago Park District* in 2002.

Your client's contact with the police officer apparently occurred this past January, when the protected grass was dormant and most vulnerable to damage from heavy use, but again, we would like to confer with you at our mutual convenience so see how you can accomplish your goal and we can do so within

Use Request--Plaza Ferdinand
September 24, 1987
Page 2

Alternatives:

1. Permit use of Plaza Ferdinand under the conditions contained in the five criteria outlined above.
2. Permit use of Plaza Ferdinand and modify the criteria.
3. Confirm the existing policy of passive use of Plaza Ferdinand.

Policy Implications:

The present policy was enacted to protect the Plaza. If it is to be modified, strict compliance with the five criteria outlined herein will be critical to preserving the Plaza in its present condition.

Financial Impact:

Some revenue will accumulate in a Plaza maintenance fund as a result of the user fee. It is not possible to predict, at this time, an annualized amount.

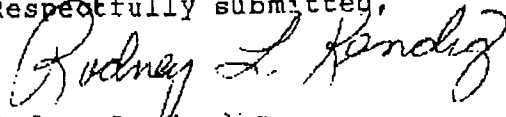
Staff Contact:

Deputy City Manager Ed Hinkle, CRA Executive Director Jennifer Hodnette, Leisure Services Director William Vickrey.

Recommendation:

Should City Council choose to modify the existing use policy for Plaza Ferdinand, we strongly recommend that the five use criteria outlined herein be adopted and strictly adhered to.

Respectfully submitted,


Rodney L. Kendig
City Manager

F128

OFFICE OF THE CITY CLERK
REPORT OF CITY COUNCIL ACTION

Agenda Item: # 8-U

Meeting Date: 9/21/87

SUBJECT: Use Request -- Plaza Ferdinand, DTB

MOTION:
 TO APPROVE Amended to delete last sentence and add " Authorize the City Manager on request by DTB to close Palafox & Jefferson Streets during rain.

Copies sent to the following as checked:

CITY MANAGER
 CITY ATTORNEY
 ASSISTANT CITY MANAGER

DEPUTY CITY MANAGER FOR
FINANCE
 - Treasurer
 Property Mgt.
 Purchasing
 Data Processing

DEPUTY CITY MANAGER FOR
GENERAL GOVERNMENT

COMMUNITY DESIGN & PLANNING - Director
 CD & Housing
 ENGINEERING - Director
 AND FIELD OPERATIONS - Streets & Traffic
 Bldg. & Maintenance
 FIRE - Chief
 POLICE - Chief
 Inspection
 RISK MGT. - Director

DEPUTY CITY MANAGER FOR
PUBLIC ENTERPRISE

AIRPORT - Director
 ESP - Director
 LEISURE SERVICES - Director
 Recreation
 Parks
 Saenger/Auditorium
 Library

MARINE OPERATIONS - Director

PERSONNEL - Director
 PUBLIC SERVICES - Director
 Sanitation
 Garage

CRA - Director
 GCA - Director
 CIVIL SERVICE - Director

COMMITTEE		CITY COUNCIL MEMBERS	ACTION			
FINANCE	STEERING GENERAL GOVERNMENT PUBLIC ENTERPRISE		NOTICE	SECOND	YES	NO
	*	Hank Anson	✓		✓	
	*	John Kadlec			✓	✓
	VC	Mike DeSorbo			✓	✓
	*	Steve Del Gallo			✓	✓
VC	*	Cecil Hunter			✓	✓
	VC	Joyce Reese <i>absent</i>				
*	C	Lester Smith			✓	✓
*	C	Cecil Jones			✓	✓
C	*	Jerry Maygarden			✓	✓
*	*	Michael Bass			✓	✓

C = CHAIRMAN
 VC = VICE CHAIRMAN
 * = MEMBER

COUNCIL FILE ✓

REPORT OF THE COMMITTEE OF THE WHOLE
September 24, 1987
Page 2

T. SUBJECT: COUNCIL MEETING SCHEDULE--
NOVEMBER AND DECEMBER

Reference Material:

Committee Memorandum September 22, 1987

Recommendation:

That City Council change the Council meeting days
in November and December to the first and third
Thursday (November 5 & 19 and December 3 & 17)

The motion passed unanimously.

U. SUBJECT: USE REQUEST -- PLAZA FERDINAND

Reference Material:

Committee Memorandum September 24, 1987

Recommendation:

That City Council permit the use of Plaza
Ferdinand under the conditions contained in the
five criteria outlined in the referenced
memorandum on a one time trial basis. Further,
no adjacent streets are to be closed.

The motion passed 8-1 with Councilman Jones
dissenting.

V. SUBJECT: SAN CARLOS HOTEL

Reference Material:

Committee Memorandum September 21, 1987

Recommendation:

Referred to General Government Committee.

The motion carried unanimously.
