

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE CITY OF NEW YORK, RAYMOND KELLY, as
COMMISSIONER of THE NEW YORK CITY POLICE
DEPARTMENT, and ADRIAN BENEPE, as
COMMISSIONER of THE NEW YORK CITY
DEPARTMENT OF PARKS AND RECREATION,

**NOTICE OF MOTION FOR
PRELIMINARY
INJUNCTION**

Plaintiffs, Index No. 400891/05

-against-

TIMES' UP, INC., WILLIAM DiPAOLA, BRANDON
NEUBAUER, LEAH RORVIG and MATTHEW ROTH,

Defendants.

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PLEASE TAKE NOTICE that upon the annexed affirmation of Assistant Corporation Counsel, Sheryl R. Neufeld, dated April 5, 2005; the annexed affidavit of New York City Police Department Assistant Chief Bruce Smolka, sworn to on April 4, 2005; the annexed affidavit of New York City Department of Parks and Recreation Chief of Marketing and Corporate Sponsorship Elizabeth Smith, sworn to on March 22, 2005; and upon the all the papers, pleadings and proceedings heretofore had and filed herein, the undersigned will move before this court, at Submission Part, Room 130 of the Courthouse located at 60 Centre Street, New York, New York, on the 5th day of May, 2005 or as soon thereafter as counsel can be heard, for a preliminary injunction pursuant to CPLR §6311, enjoining and restraining the defendants, and all those acting in concert with them, from participating in future Critical Mass bicycle rides absent the grant of a parade permit by the Police Commissioner, from gathering in Union Square Park (or any other City park) with a group of twenty or more Critical Mass riders absent the grant of a permit by the Parks Commissioner, and from advertising that Critical Mass

bike ride participants gather in Union Square Park (or any other City Park) immediately prior to the start of the monthly Critical Mass bicycle rides absent the grant of a permit by the Parks Commissioner, and for such other and further relief as may be just, proper, and equitable.

PLEASE TAKE FURTHER NOTICE THAT pursuant to CPLR §2214(b), answering affidavits shall be served at least seven days prior to the return date of this motion.

Dated: New York, New York
April 5, 2005

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE CITY OF NEW YORK, RAYMOND KELLY, as
COMMISSIONER of THE NEW YORK CITY POLICE
DEPARTMENT, and ADRIAN BENEPE, as
COMMISSIONER of THE NEW YORK CITY
DEPARTMENT OF PARKS AND RECREATION,

Plaintiffs,

-against-

TIMES' UP, INC., WILLIAM DiPAOLA, BRANDON
NEUBAUER, LEAH RORVIG and MATTHEW ROTH,

Defendants.

**AFFIRMATION OF SHERYL
R. NEUFELD IN SUPPORT
OF PLAINTIFFS' MOTION
FOR A PRELIMINARY
INJUNCTION**

Index No. 400891/05

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SHERYL R. NEUFELD, an attorney admitted to practice in the courts of the
State of New York, affirms the following to be true under the penalties of perjury, pursuant to
CPLR 2106:

1. I am an Assistant Corporation Counsel in the office of MICHAEL A.
CARDOZO, Corporation Counsel of the City of New York, attorney for the plaintiffs herein. I
make this affirmation based upon my review of records maintained by, and information obtained
from, various departments of the City of New York and from statements made to me by officers
or agents of the City of New York.

2. I submit this affirmation in support of the plaintiffs' motion for a
preliminary injunction enjoining the defendants and all those acting in concert with them from
participating in the monthly Critical Mass bicycle rides, meeting and gathering in Union Square
park immediately prior to those rides, and advertising the pre-ride gatherings, unless the required

permits have been issued by the New York City Police Department (“Police Department”) and the New York City Department of Parks and Recreation (“Parks Department”).

3. As set forth in the verified complaint, Critical Mass bicycle rides are “parades or processions” which require a permit from the Police Department pursuant to New York City Administrative Code (“Administrative Code” or “Admin. Code”) §10-110. A copy of the verified complaint is attached hereto as Exhibit “A.” In addition, the pre-ride gatherings in Union Square Park are special events which require a permit from the Parks Department. See Rules of the City of New York (“RCNY”), Title 56, §§1-05, 2-08. Despite the need for them to do so, no one has applied to the Police Department or the Parks Department for a permit for any Critical Mass bicycle ride or pre-ride gathering. Finally, unless a permit has been issued, it is unlawful to advertise the time and location of a special event or demonstration in a City park. See 56 RCNY §2-08(s).

4. The Court is referred to the accompanying Affidavits of Police Department Assistant Chief Bruce Smolka (“Smolka Aff.”) and Parks Department Chief of Marketing and Corporate Sponsorship Elizabeth Smith (“Smith Aff.”), which describe the impact that the Critical Mass bicycle rides and pre-ride gatherings have had on the City of New York in recent months.

STATEMENT OF FACTS

5. Bicycle rides known as “Critical Mass” have occurred in New York City on the last Friday of every month for a number of years. However, in recent months, and particularly in the nice weather, the rides have increased in size to the point where they regularly attract hundreds, if not thousands, of participants. See Smolka Aff., ¶¶3, 7, 8, 10, 15. The Critical Mass bicycle rides appear to take place along a different route each month, however, they all begin in Union Square Park. See id. at ¶6.

The Parade Permit Requirement

6. Upon leaving Union Square Park, bicyclists involved in the Critical Mass ride regularly violate the provisions of the New York State Vehicle and Traffic Law (“VTL”) and the New York City Department of Transportation’s Traffic Rules (i.e. RCNY Title 34, Section 4-01 et seq.) (“DOT Traffic Rules”). See Smolka Aff., ¶¶6-8, 10, 17-19.

7. Both the VTL and DOT Traffic Rules provide that bicyclists are subject to traffic regulations applicable to vehicle drivers (except those that by their nature cannot have any application to bicyclists). See VTL §1231; 34 RCNY §4-02(a). Critical Mass participants, however, have been known to interfere with pedestrian rights of way [34 RCNY §4-02], disobey traffic signals, disobey the requirement that bicyclists must ride in designated bicycle lanes or, if no bicycle lanes are provided, as near as practicable to the curb or edge of a roadway [34 RCNY §4-12(p)(1), (3)], and disobey the requirement not to travel on roadways specifically excluded for their class of vehicle [34 RCNY §4-12(o)(1)]. See Smolka Aff., 6-8, 10, 17-19.

8. Because they proceed down the street *en masse* in violation of the foregoing traffic regulations, the Critical Mass bicycle rides are parades or processions which require a parade permit. The term “parade or procession” is defined in 38 RCNY §19-02(a) to mean “any march, motorcade, caravan, promenade, foot or bicycle race, or similar event of any kind, upon any public street or roadway.” The conduct of the Critical Mass riders fits squarely within this definition.

9. Pursuant to Administrative Code §10-110, it is unlawful to participate in a parade or procession unless the Police Commissioner has issued a permit. No parade permit has been issued by or sought from the Police Commissioner in connection with any past or planned Critical Mass bike ride. See Smolka Aff., ¶4.

The Parks Permit Requirement

10. In addition to needing a parade permit for the actual Critical Mass bicycle ride, the pre-ride gathering, which takes place in Union Square Park, requires a permit from the Parks Department.

11. Pursuant to the Parks Department's Rules, a special events permit is required for any assemblies, meetings or group activities involving more than twenty people in a New York City park. See Smith Aff., ¶4; 56 RCNY §§1-02 (definition of "Special Event" and "Demonstration"), 1-05(a), 2-08. The Parks Department Rules apply to all gatherings of more than twenty people in a New York City park, including those that occur either before or after a parade or other procession. See Smith Aff., ¶5.

12. It is unlawful for a group of more than twenty people to meet or gather for a group activity in a City park without having obtained a special events permit from the Parks Department. See also, Smith Aff., ¶¶6,7. Insofar as more than twenty Critical Mass bike riders meet and congregate in Union Square Park prior to the start of the monthly Critical Mass rides, the Critical Mass ride participants are engaging in conduct for which a Parks Department special events permit is required. See Smolka Aff., ¶¶6-8, 10, 15, 18-19; Smith Aff., ¶5. No special events permit has been issued or sought from the Parks Commissioner in connection with any past or planned Critical Mass bike ride. See Smith Aff., ¶9.

13. In addition, as no special events permit has been issued or sought from the Parks Department, it is also unlawful to advertise that Critical Mass participants meet in Union Square Park prior to the start of the monthly Critical Mass bicycle rides. See 56 RCNY §2-08(s).

The City's Prior Attempts to Enjoin the Critical Mass Rides and Pre-Ride Gatherings

14. In early September 2004, the Police Department attempted to find an individual or an entity that would take responsibility for applying to the Police Department for the required parade permits. See Smolka Aff., ¶9. Those efforts were unsuccessful. However, at the start of the September 24, 2004 ride, Assistant Chief Smolka was able to negotiate an on-the-spot event route with Christopher Dunn, an attorney for the New York Civil Liberties Union. See id. Mr. Dunn informed Chief Smolka that although there was no specific group leadership, he thought he would be able to get some of the cyclists to follow the agreed-upon route. See id.

15. Indeed, the majority of cyclists did follow the route that had been agreed-upon for the September 24, 2004 ride. See Smolka Aff., ¶10. There were, however, some cyclists that did not follow the agreed-upon route. In particular, a group of cyclists veered from the route at 36th Street and Seventh Avenue. See id. at ¶¶11-12. After this happened, the Police Department cut these riders off on 36th Street between Fifth and Sixth Avenues. When this occurred, some riders began dropping their bicycles and locking them to public property on the sidewalk. The Police Department seized the bicycles that had been left unattended on 36th Street on September 24. See id. at ¶12.

16. Five individuals who had their bicycles removed from 36th Street on September 24, 2004 subsequently sued the City. That case, Bray, et. al. v. City of New York, et. al., 04 CV 8255, is currently pending in the Southern District before Judge William H. Pauley.

17. In October 2004, the City answered the Bray complaint, interposed a counterclaim, and sought a preliminary injunction stopping those plaintiffs and all other participants in the Critical Mass bicycle rides from participating in the rides unless a parade permit is obtained from the Police Department. On or about October 28, 2004, Judge Pauley

denied the City's motion on laches grounds. A copy of Judge Pauley's October 28, 2004 decision is attached hereto as Exhibit "B."

18. In November 2004, the City made a motion to amend its counterclaim to include a claim that in addition to violating the City's parade permit requirement (i.e. Administrative Code §10-110), the Bray plaintiffs and other participants in the monthly Critical Mass bicycle rides also violate the parks permit requirement when more than twenty Critical Mass participants meet and gather in Union Square Park prior to the monthly bicycle rides. In addition to moving to amend its counterclaim, the City also moved again for a preliminary injunction stopping the Bray plaintiffs, and all other participants in the Critical Mass bicycle rides from gathering in Union Square park and participating in the bicycle rides unless the required permits are obtained.

19. The Bray plaintiffs then cross-moved to dismiss the City's counterclaim. In late December 2004, Judge Pauley issued a decision declining to exercise supplemental jurisdiction over the City's counterclaim (which was based entirely on state law) and instead opined that the state court should decide whether participants in Critical Mass bicycle rides violate the City's parade and parks permitting requirements. A copy of Judge Pauley's December 23, 2004 decision is attached hereto as Exhibit "C."

The Instant Action

20. Following Judge Pauley's direction, the City has now commenced the instant state court action to permanently enjoin the violation of the parade permit requirement and the parks permit requirement by defendants and other participants in Critical Mass bicycle rides in New York City, and to permanently enjoin defendants from advertising or otherwise

promoting Critical Mass bicycle rides unless the required Parks Department permit has been obtained for any pre-ride gatherings which take place in a City park.

21. The Bray plaintiffs, however, have not been named as defendants in the instant action because there is no evidence that any of the Bray plaintiffs are regular participants in the monthly Critical Mass bicycle rides. Rather, the defendants in this action are a non-profit corporation known as Time's Up, which regularly advertises, encourages and promotes the New York City Critical Mass bicycle rides (see www.times-up.org), and key members of that organization including their Executive Director and media and legal liaisons. In addition, upon information and belief, the individual defendants are also regular participants in the monthly Critical Mass bicycle rides. See Verified Complaint (Exhibit "A"), ¶¶5-9.

22. As it is extremely difficult for the Police Department to protect public safety when large groups gather in the City's parks and take to the streets for un-permitted events, the City cannot wait for this matter to be fully litigated before the rides and pre-ride gatherings come to a stop.

**PLAINTIFFS HAVE MET THE STANDARD
FOR GRANTING INJUNCTIVE RELIEF**

23. It is well established that a municipality seeking injunctive relief is entitled to injunctive relief upon a prima facie showing that its laws are being violated. A municipality is not required to meet the traditional three-pronged test for injunctive relief. Such relief may be granted pendente lite without a demonstration of special damages or injury to the public. The proof of the violation alone is sufficient grounds for the issuance of injunctive relief. City of New York v. Castro, 143 Misc. 2d 766, aff'd 559 N.Y.S. 2d 508 (1st Dept. 1990); City of New York v. Bilynn, 118 A.D.2d 511 (1st Dept., 1986); City of New York v. Narod Realty Corp., 122 Misc.2d 885 (Sup. Ct. Bx. Co. 1983); Incorporated Village of Freeport v. Jefferson

Indoor Marina, Inc., 162 A.D.2d 434 (2d Dept. 1990); People ex rel. Bennett v. Laman, 277 N.Y. 368, 383 (1938); City of New York v. Cincotta, 133 A.D.2d 244 (2d Dept. 1987); Town of Poughkeepsie v. Hopper Plumbing & Heating Corp., 23 A.D.2d 884 (2d Dept. 1965); and City v. Capri Cinema, 641 N.Y.S.2d 969 (Sup. Ct. New York Co. 1995).

24. As detailed above, here, there is clear and convincing evidence that participants in the monthly Critical Mass bicycle rides engage in conduct which requires the issuance of a permit from the Police Department. That the parade permit requirement applies to processions of pedestrians and vehicles, including bicycles, has been recognized in numerous court cases. See, e.g., MacDonald v. Safir, 206 F.3d 183 (2d Cir. 2000) (recognizing applicability of parade permit requirement to pedestrian parades and marches); Irish Lesbian and Gay Org. v. Giuliani, 143 F.2d 638 (2d Cir. 1998) (same); United Yellow Cab Drivers Ass'n v. Safir, 2002 U.S. Dist. LEXIS 4866 (S.D.N.Y. 2002) (recognizing the applicability of parade permit requirement to vehicular processions). Indeed, the Police Department routinely issues permits for other bicycle related events. See Bray, Exhibit "B" at p. 6 ("The Police Department issues parade permits for events involving other 'loosely associated' individuals, such as the annual Greenwich Village Halloween Parade, and has not denied a parade permit for a bicycle event in the past three years."). There is also clear and convincing evidence that no one has ever sought to obtain the required parade permit.

25. As further detailed above, there is clear and convincing evidence that participants in the monthly Critical Mass bicycle rides engage in conduct which requires the issuance of a permit from the Parks Department. As explained in the Smith Affirmation, the Parks Department Rules apply to all gatherings of more than 20 people in a New York City park, including those that occur either before or after a parade or other procession. See Smith Aff., ¶5.

Indeed, there are other bicycle events where special events permits are issued by the Parks Department for both the gathering point for cyclists before the ride and rest stops throughout the ride that are in City parks. See id. There is also clear and convincing evidence that no one has ever sought to obtain the required special events permit.

26. Additionally, there is clear and convincing evidence that the defendants regularly advertise the fact that Critical Mass bicycle ride participants meet and gather in Union Square Park at 7:00 p.m. on the last Friday of each month. See www.times-up.org/calendar/calendar.php. The Parks Department's rules [56 RCNY §2-08(s)] prohibit the advertising of any special event in a City Park unless a permit has been issued for that event.

27. Accordingly, plaintiffs have established a prima facie case that the defendants are violating the parade permit and parks permit requirements when they meet, gather and participate in the monthly Critical Mass bicycle rides. In addition, as the Parks Department has not issued a special events permit for any past or future critical mass bicycle ride, plaintiffs have established a prima facie case that defendants have violated and continue to violate 56 RCNY §2-08(s) by advertising the time and place of the pre-ride gatherings. Thus, plaintiffs are entitled to a preliminary injunction prohibiting this unlawful activity.

28. Since plaintiffs have made a prima facie showing of entitlement to relief, plaintiffs are entitled to the requested injunction without a showing that they satisfy the traditional three-prong test for the grant of a preliminary injunction.

29. However, such a showing can readily be made, and plaintiffs would accordingly be entitled to the requested injunction if that standard were applicable here. Specifically, (1) plaintiffs are likely to succeed on the merits; (2) plaintiffs will be irreparably injured absent the grant of a preliminary injunction; and (3) the balancing of equities favors

granting the injunction. See, e.g., State of New York v. Fine, 72 N.Y.2d 967, 968-69 (1988); W.T. Grant Company v. Srogi, 52 N.Y.2d 496, 517 (1981); Schneider Leasing Plus, Inc. v. Stallone, 172 A.D.2d 739 (2d Dept.), app. dismissed, 78 N.Y.2d 1043 (1991); Zonghetti v. Jeromack, 150 A.D.2d 561 (2d Dept. 1989); Koursiaris v. Astoria North Development, Inc., 143 A.D.2d 639 (2d Dept. 1988).

30. First, as explained above, plaintiffs are likely to succeed on the merits of their claims that it is unlawful to participate in the Critical Mass bicycle rides and pre-ride gatherings unless the required permits have been issued by the Police Department and the Parks Department. Plaintiffs are also likely to succeed on the merits of their claim that it is unlawful to advertise a special event in a City park, unless the Parks Department has already issued a permit for that event.

31. Second, allowing the Critical Mass rides to proceed without the required permits irreparably injures the plaintiffs. As Assistant Chief Smolka explains, lawless unauthorized Critical Mass riders cause problems for emergency services personnel, vehicular traffic stoppages, safety issues for pedestrians and altercations between motorists and bikers. See Smolka Aff., ¶21. Parade permits enable the Department to protect the needs of event participants and the general public. See id. at ¶¶4, 20. Once a permit is issued, the Department is able to assign officers to assist with the event. These officers will block-off the designated event route, escort the procession through the route and re-route pedestrian and vehicular traffic as needed. See id. Likewise, Elizabeth Smith explains that during their pre-ride gatherings in Union Square park, Critical Mass ride participants have been known to block vehicular and pedestrian flow and interfere with other lawful park use. See Smith Aff., ¶¶8. As a result, an injunction from this Court, putting an end to any unpermitted rides at the outset, would be more

protective of the safety of the cyclists, pedestrians, motorists, and officers, than the City's ability to exercise of its existing powers to enforce traffic and parks regulations.

32. Next, a balancing of the equities clearly favors plaintiffs. In this regard, the City's need to protect the public safety in the event that defendants and other bike riders continue take to the streets *en masse* as part of future un-permitted Critical Mass bike rides (particularly in light of the fact that the rides will undoubtedly be getting larger as the weather gets nicer) far outweighs the defendants' right to participate in these un-permitted events pending final resolution of this matter. As detailed above and in the Smolka and Smith Affidavits, allowing the rides and pre-ride gatherings to continue in their current ad hoc fashion creates a danger to both the ride participants and the pedestrians and motorists who find themselves in the vicinity of the ride.

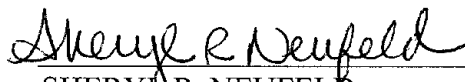
33. Finally, plaintiffs have no adequate remedy at law.

34. Accordingly, plaintiffs are entitled to a preliminary injunction.

35. No prior application for the relief requested herein has been made to this or any other court or judge.

WHEREFORE, it is respectfully requested that this Court issue an order enjoining the defendants and all those acting in concert with them from participating in the monthly Critical Mass bicycle rides, meeting and gathering in Union Square park immediately prior to those rides and advertising the pre-ride gathering, unless the required permits have been issued.

Dated: New York, New York
April 5, 2005



SHERYL R. NEUFELD

engaging in conduct that requires a permit from the Department without having first obtained such permit.

3. Upon information and belief, Critical Mass bicycle rides have been taking place in New York City for several years. It is my understanding that when these events first began they were relatively small in scale, gathering less than one hundred participants for each ride. However, it has come to my attention that the rides have now grown in scale to the point where they are consistently very large events that severely disrupt vehicular traffic and present the City with serious public safety issues.

4. Processions, parades and races are not permitted upon any street in New York City unless a permit has been obtained from the police commissioner. See New York City Administrative Code (“Administrative Code”) Section 10-110(a). Once issued, these permits (known as “parade permits”) will designate the time as well as the exact route that the procession, parade or race will take. See Admin. Code §10-110(a)(3). Department records indicate that no individual or entity has ever applied for a permit to hold a Critical Mass ride, despite the obvious need for them to do so.

5. In 2004 I was present at the August, September, October and November Critical Mass rides, where I had the opportunity to observe first-hand the public safety issues caused by these un-permitted events. In addition, I am aware of the circumstances surrounding the July and December rides, as well as the January, February and March 2005 rides.

6. In general, participants in the Critical Mass rides meet and gather in the north side of Union Square Park at approximately 7:00 p.m. on the last Friday of each month. When the crowd gets too large for the park, they will spill out into the street which causes traffic congestion in the area surrounding the park. Once a large group has gathered, the riders will

leave the park. It generally takes approximately half an hour for the riders to gather together before leaving the park to actually start riding. The riders appear to follow a different route each time the ride takes place. During each ride, the cyclists proceed in a massive group formation, taking up the entire roadway and not leaving any room for vehicular traffic to pass-by. Most riders also do not stop for red lights. This conduct violates provisions of the New York State Vehicle and Traffic Law (“VTL”) and Title 34, Section 4-01 et seq. of the Rules of the City of New York (“RCNY”) (“DOT Traffic Rules”).

7. More specifically, I have been informed that in July there were approximately three to four thousand participants at the Critical Mass Friday evening ride. I am also aware that at one point, the riders entered the Battery Park underpass and proceeded onto the FDR Drive without authorization. Once on the FDR Drive, some riders dismounted from their bicycles and blocked entrances and exists. Because the NYPD was unaware that the group would be proceeding onto the Drive, only two supervisors and eight officers were present, and traffic on the FDR Drive was brought to a standstill.

8. The August Critical Mass ride, which took place on the Friday evening immediately prior to the start of the Republican National Convention (“RNC”), had approximately five thousand participants. During this ride, a group of cyclists proceed North on Fifth Avenue to 57th Street and then South on Seventh Avenue. Other groups of cyclists splintered off and rode through the East Village. The ride, which lasted approximately three hours, brought vehicular traffic to a standstill in many locations and created a very serious safety condition. During the course of the ride, I observed participants dismount their bicycles and proceed to stand in the intersections to block traffic during the light changes. I also observed several altercations between vehicle operators and cyclists. Because the riders were so disruptive

to normal traffic flows, it was extremely difficult for the Department to maneuver around the mass to control the event.

9. On September 24, 2004, riders from the Critical Mass group again participated in a ride throughout Manhattan.¹ Immediately prior to the start of the September 24 ride, I had a conversation with Christopher Dunn, who offered to negotiate on behalf of the group. I am aware that Mr. Dunn is both an attorney for the New York Civil Liberties Union as well as a member of the Board of the Transportation Alternatives group.² During our conversation, Mr. Dunn and I agreed upon a route for the cyclists to follow. Although Mr. Dunn indicated that there was no specific group leadership, he indicated that he thought he would be able to get some of the cyclists to follow the agreed-upon route. Specifically, we agreed that the group of cyclists would leave Union Square Park and proceed North on Park Avenue South to West 57th Street at which point they would turn west onto 57th Street and proceed to Seventh Avenue where they would turn South and proceed back to Union Square Park via 17th Street.

10. It appeared to me that there were approximately twelve hundred cyclists participating in the September 24 event. Most of the participants did follow the last-minute agreed upon route that Mr. Dunn and I had worked out, however, there were some that did not. Those that did follow the last-minute agreed upon route were treated as if they were riding with the sanction of a parade permit. In fact, I have been involved in several situations with other

¹ After the August ride, in an effort to stop the disruption and public safety issues caused by the large scale un-permitted Critical Mass events, the Department attempted to find an individual or an entity that would take responsibility for applying to the Police Department for the required parade permits. Those efforts were unsuccessful.

² Transportation Alternatives is “a 5000-member NYC-area non-profit citizens group working for better bicycling, walking and public transit, and fewer cars.” See www.transalt.org.

groups where parade permits are negotiated on-the-spot at the last minute to ensure the safety of the participants, pedestrian and vehicular traffic and the members of the Department responsible for policing the event. The riders who did not follow the agreed upon route were considered to be in violation of the City's parade permit requirement, and were thus subject to arrest.

11. On September 24, as the first cyclists in the group neared the Waldorf Astoria (49th Street and Park Avenue), a group of officers stopped the riders to allow those who had fallen behind in pace to catch-up to the rest of the group and thus reduce the disruptions caused by the procession. This is a routine procedure frequently employed by the Department during parades and processions. At this point, a group of riders decided not to wait for the rest of the group. Instead they proceeded west on a nearby side-street, then turned North onto Fifth Avenue and proceeded to ride against traffic. The Department was unable to stop this group from riding into oncoming traffic on Fifth Avenue. It is believed that this group subsequently rejoined the larger group as it was heading South on Broadway near Times Square.

12. The Critical Mass riders were also forced to stop as they neared 34th Street because of the presence of vehicular traffic in the intersection which made it impossible for the cyclists to pass. At this point, the Department was again faced with a situation where a group of riders decided to leave the pre-planned route. These cyclists made a left turn onto 36th Street and proceeded East to Sixth Avenue. After this occurred, I instructed officers to cut the riders off on 36th Street between Fifth and Sixth Avenues. At this point some riders began dropping their bicycles and locking them to public property on the sidewalk. I also directed officers to remove

any bicycles that were left unattended on the street.³ In addition to the removal of the bicycles, a number of riders who deviated from the designated route were arrested.

13. The next Critical Mass ride took place on October 29, 2004. As this ride was close in time to Halloween, many of the participants were dressed in costumes. This ride took place after the Bray lawsuit had been commenced. At Judge Pauley's suggestion, in an effort to see if anything could be worked out between the City and the ride participants, the Police Department agreed to unilaterally propose a route for the cyclists to follow during the October 29th ride. The Department also agreed that it would not enforce traffic regulations or the parade permit requirement against those riders that adhered to the pre-determined route.

14. As the cyclists gathered in Union Square Park, the Department handed out flyers which set forth the route that had been designated. In addition to setting forth the route, the flyers explained that it is illegal to ride a bicycle in a procession on the public streets if a permit for the procession has not been issued by the Police Department, that bicyclists are subject to the same rules of the road that are applicable to motor vehicles, that bicyclists must ride in usable bicycle lanes or near the curb or edge of the road way, that bicyclists may not impede pedestrian or vehicular traffic, and that individuals leaving bicycles unattended in a public place are in violation of the Administrative Code, which could result in the issuance of a summons and the removal of the bicycle. The Department also made repeated announcements

³ Five individuals who had their bicycles removed from 36th Street on September 24, 2004 subsequently sued the City. That case, Bray, et. al. v. City of New York, et. al., 04 CV 8255, is currently pending in the Southern District before Judge William H. Pauley. The City tried unsuccessfully in that proceeding to obtain a preliminary injunction stopping those plaintiffs and all other participants in the Critical Mass rides from engaging in the rides unless a parade permit was obtained from the Police Department. However, in late December 2004, Justice Pauley issued a decision declining to exercise supplemental jurisdiction over the City's counterclaim, which was based entirely on state law.

over a loudspeaker asking riders to adhere to the route set forth on the flyer. Unfortunately, despite our best efforts, I observed many cyclists tearing up the flyers that were distributed to them. In addition, I observed a significant portion of the crowd yelling during the announcements and placing their fingers in their ears.

15. Once the cyclists exited Union Square Park, I left to observe what was taking place along the route that had been recommended by the Department. When cyclists deviated from the route, I tried to follow them in my vehicle. I continued to patrol the ride and the areas where we knew cyclists had deviated until the after conclusion of the ride. I estimate that approximately two to three thousand cyclists participated in the October 29 ride.

16. For the first thirty minutes of the ride, the majority of cyclists followed the designated route. While riding along the designated route, the cyclists spanned an area of fifteen city blocks. Police officers were stationed along the route and regularly stopped cross-town traffic to ensure the safety of the participants. In addition, officers were present at the back of the group to ensure that cars that were behind the cyclists would remain at a safe distance behind the riders. As the cyclists reached turning points along the designated route, several officers were present to stop the cyclists in order to allow the cyclists who were towards the back of the ride to catch up. After the first half hour of the ride, as the cyclists were proceeding south on 5th Avenue (along the designated route), between three and five hundred riders left the route and made a right turn on West 39th Street.

17. Because the Police Department agreed not to take enforcement action against cyclists who rode along the designated route, those cyclists were permitted to follow the manual directions of police officers rather than fixed traffic signals. Once the cyclists broke off from the designated route, they were not permitted to violate the provisions of the VTL and DOT

Traffic Rules. Notwithstanding the fact that they were breaking the law, riders who had broken off from the designated route were observed blocking traffic and violating multiple traffic regulations as set forth in the VTL and DOT Traffic Rules. For example, these riders did not ride in designated bicycle lanes or near the curb and/or did not obey traffic lights. Motorists and pedestrians had no knowledge as to what to anticipate with respect to the break-off group and were not able to predict where cyclists would go and how motorists or pedestrians could proceed on the streets in a safe manner. A number of cyclists who deviated from the designated route were arrested.

18. The next Critical Mass ride took place on November 26, 2004. I estimate that approximately two hundred people participated in this ride. I presume that the lower turnout for this ride is attributable to the fact that it took place the day after Thanksgiving when many people were out-of-town for the holiday. Of those that participated in the ride, the Department made seventeen arrests for engaging in an un-permitted parade or procession in violation of Administrative Code § 10-110. The Department also issued six cyclists traffic summonses.

19. Apparently as a result of the colder weather, the December 2004 and January, February and March 2005 Critical Mass rides were approximately the same size as the November ride. At each of those rides, the Department made several arrests for engaging in an un-permitted parade or procession in violation of Administrative Code § 10-110. As was the case with the other Critical Mass rides, the number of arrests at those rides does not accurately reflect the number of ride participants that actually violated the parade permit requirement by riding through the streets without regard to applicable traffic regulations.

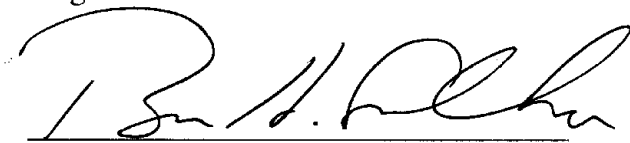
20. It is extremely difficult for the Police Department to protect public safety when groups take to the streets for un-permitted events. This is particularly true of the Critical

Mass rides which take a different route each time. Parade permits enable the Department to protect the needs of event participants and the general public. Once a permit is issued, the Department is able to assign officers to assist with the event. These officers will block-off the designated event route, escort the procession through the route and re-route pedestrian and vehicular traffic as needed. In addition, when the Park's Department issues a permit for special events in the parks, the Police Department may further monitor events in the park depending on the nature and size of the event.

21. The website www.times-up.org states that the next Critical Mass rides are scheduled to take place on April 29, May 27, June 24 and July 29, 2005. Defendants and other participants in the Critical Mass rides should not be allowed to continue to disregard the City's parade permitting scheme. If they are permitted to do so, the Police Department will continue to be faced with situations where they are either forced to police an event on a last-minute ad-hoc basis, or run the risk of severe traffic disruptions and danger to public safety. As we have seen in the past, lawless unauthorized Critical Mass riders cause problems for emergency services personnel, vehicular traffic stoppages, safety issues for pedestrians and altercations between motorists and bikers.

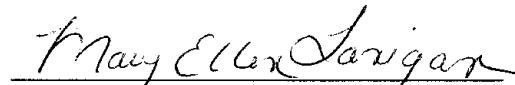
22. While it is true that the Police Department does have the ability to police the un-permitted rides and make arrests, based upon my experiences and observations over the last six months, I believe that an injunction from this Court, putting an end to any un-permitted rides at the outset, would be more protective of the safety of the cyclists, pedestrians, motorists, and officers, than the Department's exercise of its existing powers to enforce the traffic regulations. An injunction by this Court would have a greater deterrent effect with individual cyclists who might otherwise be less concerned about violating traffic regulations. In addition, it

is extremely difficult to enforce traffic regulations during an event such as a Critical Mass ride. The large mass of cyclists clog traffic and are difficult to stop. The police have great difficulty predicting where riders will go and catching up to those cyclists in time to issue a traffic summons. Moreover, when the Department has attempted to stop the ride and arrest the riders, ride participants often walk away from their bicycles and leave them in the middle of the street or sidewalk, thereby creating an additional safety hazard for pedestrians and motorists. As a result, it is necessary to stop the ride before it begins.



ASSISTANT CHIEF BRUCE SMOLKA

Sworn to before me this
4 day of April, 2005.



NOTARY PUBLIC

MARY ELLEN LANIGAN
Notary Public, State of New York
No. 01LA6101260
Qualified in Nassau County
Commission Expires Nov. 10, 2007

that gather in Union Square Park prior to the start of their monthly ride has swelled into the thousands. As will be explained herein, to be lawful, this gathering requires a special events permit from the Parks Department.

3. The New York City Charter sets forth that the Parks Department shall manage and care for all parks in the City of New York, except those within the jurisdiction of other city agencies, and is directed to maintain the beauty and utility of those parks. In addition, the Parks Department is authorized to establish and enforce rules and regulations for the use, government and protection of the public parks. New York City Charter, Chapter 21, §533.

4. Pursuant to Title 56 of the Rules of the City of New York (“RCNY”) §1-01 et seq. (“Parks Department Rules”), a special events permit is required for any assemblies, meetings or group activities involving more than 20 people in a New York City park. 56 RCNY §§1-05(a), 2-08.

5. The Parks Department Rules apply to all gatherings of more than 20 people in a New York City park, including those that occur either before or after a parade or other procession. Examples of parades and other procession that have obtained special events permits for their pre and or post procession gatherings include: the annual AIDS walk and the American Cancer Society Making Strides Walk, both of which leave from and return to Central Park pursuant to Parks Department special events permit; the August 2004 Planned Parenthood march during the Republican National Convention that received a Parks Department special events permit to gather in Cadman Plaza, Brooklyn before marching over the Brooklyn Bridge and another permit to reconvene in City Hall Park at its conclusion; and the Avon Products Two Day Fundraising Walk that receives a Parks Department special events permit for its gathering point on Ward’s Island (City park land) and receives special events permits for eight other city

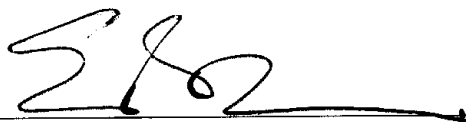
park locations, which are used as rest stops for participants along the way. More specifically, there are bicycle events where special events permits are issued by the Parks Department for both the gathering point for cyclists before the ride and rest stops throughout the ride that are in City parks. Examples include, the Multiple Sclerosis Bike Tour, which gathers at Battery Park pursuant to a special events permit and receives a permit for Inwood Hill Park, which is used as a rest area along the ride; and “Bike New York,” which gathers at Battery Park pursuant to permit and receives a Park Department permit to ride through Central Park during the ride. Where required, the organizers of these events also obtain permits for the actual procession from other appropriate City agencies.

6. Upon observing people gathered in a park for an un-permitted event, the Parks Department may issue a summons to the organizers of the event for violating the provisions of 56 RCNY §§1-05(a) and 2-08.

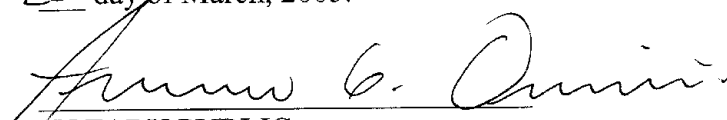
7. When there is no clear organization responsible for an event, the general practice of the Parks Department has been to have its Parks Enforcement Patrol (“PEP”) Officers issue a directive requiring the people to disperse. Generally, most participants follow that directive. When they do not, PEP Officers may summons and arrest participants for offenses incidental to participating in an un-permitted event, such as conducting an activity in a park for which a permit is required and no such permit has been issued as set forth in and 56 RCNY §1-a03(b)(6)(a), and failing to comply with directions of a police officer or Parks Department employee as set forth in 56 RCNY §1-03(c)(1). In addition, officers from other agencies, such as the New York City Police Department, have, on occasion, taken other enforcement action when appropriate.

8. I been informed that the Critical Mass ride participants have been known to block vehicular and pedestrian flow throughout the park when they gather together in advance of the monthly ride. In addition, the uncontrolled nature of the cyclists' gathering has interfered with other lawful uses of the park. For example, I am aware that during previous Critical Mass rides, the cyclists created some logistical problems for vendors of the Union Square Greenmarket who needed to access the vehicle passageways to unload at the close of the Friday Greenmarket after 6:00 p.m. If the cyclists had obtained a special events permit, the Department would have been able to make appropriate plans that could take into account the needs of the cyclists as well as other users of the park — including the Greenmarket, which has been granted permission to use certain parts of the park pursuant to a license agreement, other permitted events of the park, and other regular users of the park — so as to coordinate and harmonize their activities as best as possible. In addition, if Critical Mass does not obtain a special events permit, the Parks Department has no obligation to ensure that the north side of Union Square Park is reserved for their gathering.

9. A search of Parks Department records reveals that no one has applied for a special events permit for any previous or future Critical Mass bicycle ride.


ELIZABETH SMITH

Sworn to before me this
22 day of March, 2005.


NOTARY PUBLIC

ALESSIO G. OLIVIERI
Notary Public, State of New York
No. 02065001937
Commission Expires 1/26/06