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First Amendment Rights at Fairs, Expositions and Auditoriums

Senate Select Committee on Fairs and Rural Issues

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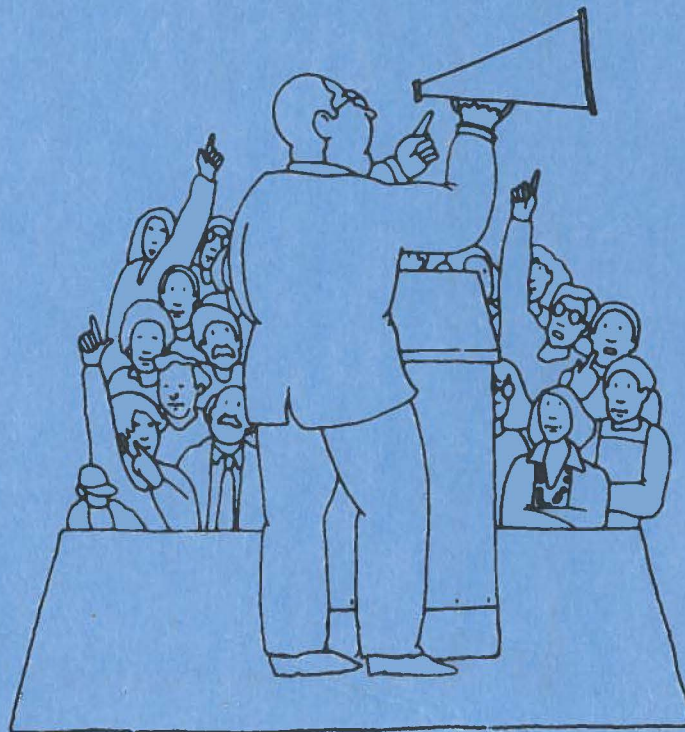
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CALIFORNIA LEGISLATURE
SENATE SELECT COMMITTEE ON
FAIRS AND RURAL ISSUES
SENATOR ROSE ANN VUICH, CHAIR

**FIRST AMENDMENT RIGHTS AT
FAIRS, EXPOSITIONS AND AUDITORIUMS**



NOVEMBER 1, 1989

DEPOSITORY

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MEMBERS

ROSE ANN VUICH, CHAIR

RUBEN AYALA
JOHN DOOLITTLE
JOHN GARAMENDI

KEN MADDY
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CALIFORNIA LEGISLATURE

SENATE SELECT COMMITTEE ON FAIRS & RURAL ISSUES

FIRST AMENDMENT RIGHTS

AT FAIRS, EXPOSITIONS AND AUDITORIUMS

NOVEMBER 1, 1989

MEMBERS

ROSE ANN VUICH, CHAIR

**Ruben A. Ayala
John Doolittle
John Garamendi**

**Ken Maddy
Robert Presley
Don Rogers**

**Laura Trout
Committee Consultant**

MEMBERS
RUBEN S AYALA
JOHN DOOLITTLE
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DON ROGERS

California Legislature

SENATE SELECT COMMITTEE ON FAIRS AND RURAL ISSUES

CHAIRER BY
ROSE ANN VUICH

LAURA TROUT
CONSULTANT

ROOM 5066, STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 445-1790
ATSS 485-1790



November 1, 1989

To All California Fairs:

I am pleased to provide each board with a copy of this important document. Freedom of Speech is a fundamental privilege held sacred by democratic societies throughout the free world.

First Amendment rights, however broadly described, has always brought about heated discussions regarding unnecessary restrictions. It is my hope this document will allow you to consider your own circumstances, and with the information provided herein, permit you to formulate a set of guidelines consistent with your purposes.

Because each fairground and community is unique, it would be impossible to provide a single set of recommendations appropriate for all boards. However, with the guidance of the Division, and input from many individual fairs, Mr. Getz has successfully drafted a document which, if properly utilized, will eliminate many of the previous and future challenges to existing board policies.

I encourage each board to carefully review this publication and utilize the tools provided to their fullest potential.

Sincerely,


ROSE ANN VUICH

v/t

Memorandum

To : All Fairs

Date : October 18, 1989

Place :

From : Department of Food and Agriculture -1010 Hurley Way, Suite 200
Sacramento, CA 95825

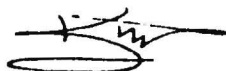
Subject : First Amendment Policy for Fairs

Enclosed is a document concerning the responsibilities of fairs under the First Amendment. This paper was prepared by Charles Getz, IV, at the request of Ester Armstrong, Assistant Director of Fairs & Expositions, Department of Food & Agriculture. This document is intended for the use of the Boards of Directors in formulating a first amendment policy. It is general in nature and is not issued as a mandate that fairs are required to follow. Rather it is intended to provide guidance to fairs in this area and to be updated as the information changes.

Many people contributed to the development of this document. The Division of Fairs & Expositions, Western Fairs Association, and numerous fairs and their directors participated in seminars and meetings to discuss the application of the First Amendment to fairs. Special thanks to the Honorable Rose Ann Vuich and Laura Trout of her staff for reproduction of this document for distribution to fairs.

Please feel free to contact Carol Chesbrough, Special Assistant, Division of Fairs & Expositions (916) 924-2115, or Charles Getz, Office of the Attorney General (415) 557-0721, if you have any questions.

Sincerely,



Kim Myrman
Acting Assistant Director
Division of Fairs & Expositions
(916) 924-2226

Memorandum

To : Ester Armstrong, Assistant Director
Division of Fairs and Expositions
1010 Hurley Way, Suite 200
Sacramento, CA 95825

Date : June 9, 1989

File No.

Telephone: ATSS (8) 597-0721
(415) 557-0721

Charles W. Getz, IV
Deputy Attorney General
From : Office of the Attorney General - San Francisco

**Subject: PROPOSED FINAL GUIDELINES TO ACCOMMODATE
FIRST AMENDMENT RIGHTS AT FAIRS, EXPOSITIONS AND AUDITORIUMS**

Pursuant to your request, this memorandum and attached guidelines are intended to assist Fairs in handling demonstrations and other free speech activities on fairgrounds. The general advice in this memorandum is for purposes of determining which guideline language is appropriate. Both the First Amendment to the United States Constitution and article I, section 2 of the California Constitution guarantee to California citizens the right of free speech and assembly. Recently, California fairs have experienced an increase in conflicts over those rights on or near county fairgrounds and public exhibition halls. Some free speech conflicts have resulted in litigation and an increasing number of county fairs and district agricultural associations have contacted the Division of Fairs and Expositions of the California Department of Food and Agriculture for help and advice on handling some of these problems.

In response, as you know, over a year ago an informal working group consisting of legal counsel who represent fairs,

and policy makers within CDFA met to discuss creating uniform guidelines for the various county fairs and district agricultural associations within California. An initial paper outlining First Amendment rights was presented at the Western Fairs Association convention in Anaheim in 1988. As a result of that meeting, a number of fair managers and interested persons obtained draft copies of a free speech policy and commented on that draft policy.

These comments were analyzed and after additional discussions and meetings, I was requested to prepare this paper and some proposed regulatory guidelines. Let me state from the beginning however, that nothing in this paper is intended to dictate policy. It is my understanding that these guidelines are in fact to be sent by the Division of Fairs and Expositions of the Department of Food and Agriculture in response to requests for them, but as guidance only.

No discussion of First Amendment rights can exist in a vacuum. The cases and authorities analyzing these rights and the role of government in regulating them is heavily dependent upon specific facts and a particular situation. Thus, generalities expressed in this memorandum must be tempered with a warning that an individually assigned attorney should always be consulted for any particular advice on any particular problem.

This memorandum is divided into two sections. This part is intended to discuss general principles of free expression. The second section is a series of attachments. The first

attachment presents proposed guideline language in a "menu" format. In this section a series of options is presented with explanatory language as to when each option would apply. Because of the great diversity in fairgrounds, from the California State Fair and Exposition to the smallest district agricultural association, it is almost impossible to propose language which can be utilized by every single fair or exhibit hall in all situations. By combining the discussion in the general principles section with the proposed menu, and a proposed model "bare bones" guideline, a fair board can make choices concerning those provisions which they feel would best match their needs and situation. For most fairs, version "B" may be the advisable guideline. Please note that these guidelines and the comments explaining their use, are directed toward the conduct of fair employees and the public. The purpose behind the guidelines is to comply with the cases and laws governing First Amendment conduct, not to evade those authorities. Any references to courts should be read in that context.

The next attachment is a question and answer section, and is intended to respond to some of the more commonly asked questions. Hopefully this will provide some of the information that one might need upon reading this paper.

The last attachment is a list of some of the leading cases relied upon in the advice given, plus which can be used to support the conclusions in this memorandum and for a better understanding of the rules on free speech.

With these restrictions and understandings in mind, let us now turn to the general principles underlying the exercise of First Amendment rights in California.

GENERAL PRINCIPLES OF FREE SPEECH

The principles and rights protected by the First Amendment are some of the most cherished in our constitutional form of government. Free speech and rights of association are central to our way of life. The purpose of this section of the memorandum is to briefly discuss the tension between the individual right of a citizen to exercise First Amendment rights^{1/}, and the need for the fair to regulate such activities in order to prevent disruption and maintain order.

Some fair managers have had the experience of being confronted by an angry individual or representative of a group demanding their "right" to come on to your grounds and perform certain activities such as leafleting, solicitation of funds, picketing, obtaining of signatures for a petition, registration of voters, or perhaps even commercial activities. Oftentimes, a lawyer representing the group will claim legal authority for the positions taken by that group. For a fair manager it can be bewildering to try to decipher what is required and what rights

1. For ease of discussion, the reference to "First Amendment rights" appears throughout this memorandum. This referenced is intended to include the rights guaranteed under the California Constitution which are slightly different than those under the First Amendment to the United States Constitution. This means rights to picket, pass out leaflets, solicit funds, display signs or convey a message.

the Fair has in such situations. There are no absolute rights for an individual or group to engage in conduct under the First Amendment. In struggling to create a set of rules governing First Amendment conduct, the courts have settled upon a variety of approaches to these problems which may be helpful in assessing how a court might deal with a particular problem. It should be noted that in California, free expression rights under the California Constitution have been held by courts to be more expansive than those protected by the First Amendment of the United States Constitution. However, there are no cases explaining exactly what that means.^{2/} Thus, this discussion and the legal authorities reviewed as of the date of this memorandum, focus on those positions taken uniformly by both federal and state courts. The law in this area, however, is dynamic. It is recommended that where application of the principles is unclear, legal counsel be consulted.^{3/}

First some general rules. Courts seem to favor a balancing approach -- balancing how compelling the interests of the state are versus how any restrictions affect the fundamental interests of the individual citizen. In regulating time, place and manner of speech, courts permit government more leeway than in regulating content of speech. Courts agree that content of

2. Apparently, it may just mean a private shopping mall cannot keep these activities out. See page 76 and comments to Robins case.

3. And remember -- the guidelines are intended to be a good faith effort at complying with legal requirements.

speech can be regulated only under the most narrow of circumstances. Generally, regulation as to time, place and manner of speech (referred to as "TPM") has been upheld as long as this regulation is narrow, content neutral, and reasonably related to a valid governmental purpose. Any policy or regulation which appears to focus on the content of speech will be looked upon with greater skepticism by a court and probably with disfavor. A regulation not of content, but the manner in which the speech can be expressed will be far easier to defend. The focus of the proposed guidelines therefore are on time, place and manner - TPM - protecting the Fair against disruptive behavior, but focusing on responsible action.

In addressing TPM regulations, both federal and state courts have developed two different, although similar, lines of analysis in determining how far government can go in regulating that speech. These are based upon the particular location where the speech or other activities are to occur.

The first line of cases focuses on what is called "forum" -- that is, the physical location where the activities are to take place and, the nature of the governmental activity performed there. As an example, courts have been most protective of free speech activities that occur on public streets and parks, finding that these are traditional places for expressing free speech and that government bears a heavy burden of trying to restrict such activities. Even here, however, parade permits have been upheld and the use of sound trucks or other activity such as picketing

on a public street before a private residence can lawfully be restricted. Yet, on the other side of the spectrum, courts have generally upheld restrictions on free speech activities within courthouses, schools, libraries, hospitals, prisons, and even some public auditoriums. In trying to evaluate the many cases looking at "location" or "forum," the courts look to whether the individual location has in effect created an atmosphere for public debate or created a forum where the exchange of ideas is central to the purpose of that location. For example, courts can quite readily uphold restrictions on any activities which occur within a prison, since the purpose of the prison is not to encourage debate or a free exchange of ideas and expressions. Similarly in courthouses and even our own state capitol, the courts have said that free speech activities can be restricted because of the disruptive impact. But in those same cases, the courts uphold free speech activities on the grounds of the courthouse or the capitol building, or the school yard (as long as it is not disruptive or violates noise ordinances).

Thus, anyone attempting to understand rules of First Amendment analysis must first look at the individual location -- the fairground in this case or the auditorium -- and the purpose of that fairground. That purpose can vary. For example, in one case the U.S. Supreme Court found that New Jersey operated a public auditorium (similar to the Los Angeles Coliseum or the Cow Palace for example), not as a place where free expression of ideas took place, but as a money making enterprise to provide

entertainment. Thus, First Amendment activities could be restricted within that facility. Other cases focus on the particular event occurring at a facility and determine whether that event creates a public forum. Thus, on your fairgrounds a boat show may not create the public forum since the purpose of the boat show is not to invite an exchange of ideas or debate on the public issues of the day, but sell boats; whereas a county fair may well constitute a "public forum" because of the wide range of exhibitors, including public interest groups.

Granted, this approach may seem confusing -- public forum means both the location and its underlying purpose (such as the New Jersey sports complex described above) but it can also mean the nature of an event at that particular location (for example an Air Force base, which the court held was generally not a "public forum," nevertheless temporarily became one because it sponsored an open house in a manner which generated discussion on our defense policy. Such events are called "Limited Public Forums" focusing on a particular event or facility.)

California courts have taken a slightly different approach, and look at whether the free speech activities in context, are inconsistent with the normal activity of a particular place for a particular event. This approach focuses on a particular set of facts and looks at the particular event in question. It also looks at the proposed First Amendment activities and then balances whether or not those activities would interfere with the normal activity of the Fair. As best expressed by one United

States Supreme Court Justice, loudly stating your opposition to governmental policy would be upheld on a street corner, whereas that same statement would be prohibited in a library reading room. Such disruptive conduct in a library would be inappropriate with the location and specific function of it.

Using the California line of cases and the "consistency" test on an event-by-event basis, one should ask oneself whether the proposed First Amendment activity (leafleting, picketing, solicitation of funds, or whatever it is) is inconsistent with the normal activity of the fairgrounds or the event in question.

"Inconsistent" does not mean controversial nor does it mean whether the speech will support or oppose that event. Thus, it is not "inconsistent" for an animal rights group to protest at a rodeo. However, it may be inconsistent for an animal rights group to perform certain activities within the paid gate of that rodeo which may be disruptive. Again, a balancing approach is taken by the courts -- the courts will generally uphold TPM regulations or guidelines which narrowly restrict free expression activities, which provide alternative avenues for demonstrators, and which are even-handedly applied. In some cases, such as a trade show, it may be entirely inappropriate for any First Amendment activities to occur anywhere on the grounds. One could argue that the auto show is not intended to invite a free form debate on the issues of the day, but to provide entertainment and information on a select topic -- cars -- to the general public. On the other hand, what if a group of protestors wishes to pass

out literature calling for increased federal funding of interstate highways or increased federal requirements for car safety? To try and exclude all First Amendment activities from a fairgrounds for all events would probably be unsuccessful. The guidelines and language which follow attempt to narrowly draw these restrictions in a manner which will allow your fairgrounds to function but also which will provide areas where free speech activity can take place.

Let us now examine what specific activity can and cannot be restricted. First of all, it is clear that the Fair can, under certain circumstances, restrict activities within a paid gate. The Fair cannot restrict face-to-face, one-on-one discussions. Fairs can, however, prohibit the distribution of leaflets, solicitation of funds, and most organized group activities such as displaying of signs and picketing inside the paid gate. Persons could not be refused paid entrance, however, because they wore buttons or otherwise passively expressed a particular message individually. It is doubtful whether a Fair can -- or should -- prohibit First Amendment activities anywhere on the grounds, including parking lots unless space is extremely restricted or the entire fairgrounds, including parking areas, are leased. Under such circumstances, First Amendment activity might be incompatible with the leased activity.^{4/}

4. In such situations, caution should be exercised -- courts have held that a private lessee of governmental property cannot necessarily defeat First Amendment guarantees. However, other considerations such as safety or incompatibility of the First Amendment activities with the leased activities might allow

Secondly, courts have upheld charging for a booth, for example, at a county or state fair, before allowing distribution of the literature, solicitation of funds, or other First Amendment activities within a paid site. Thirdly, courts have allowed greater restrictions on First Amendment activities where commercial speech is involved. Commercial speech means simply a message or communication promoting a product or focusing more on pecuniary interests, than in advancing a political or social idea. Sometimes the lines get blurred; for example, a manufacturer urging a change in law that would benefit the manufacturer's product line. Commercial or not? There is no clear answer.

If your fairground has a parking area, and if that parking area is physically able to support these, it would certainly be wise to create "free expression zones;" marked areas where individuals who wish to pass out literature or communicate a message can congregate and have a reasonable opportunity to reach patrons of an event at your fairgrounds. Creation of "free expression zones" in or near parking areas has been upheld by some courts instead of allowing First Amendment activities within a fairgrounds. It is not suggested that free expression zones located outside of a paid gate be made available for a fee. The bottom line should be reasonableness -- a Fair Association providing a reasonable opportunity for individuals, on a limited

for a temporary restriction of such activities. Consult your attorney on any particular questions.

basis, to communicate their message to patrons, but in a way that does not infringe upon the patron's rights nor interfere with your ability to operate. The draft guidelines, and especially "bare bones" version "B" is intended to accomplish this approach.

Let's now review some of the First Amendment activities which should be allowed but which courts have held can reasonably be regulated.

A. Things which probably should be allowed but can be regulated.

1. Free speech activities in parking areas or on grounds surrounding the fairgrounds should be allowed, and conduct can be regulated.
2. Such leafleting, picketing, signing of initiatives and similar activities can be restricted to the "free expression zones" (my term) and need not necessarily also be provided within the gates of your fairgrounds.
3. Free Expression Zones can be and should be specifically designated or marked. The number of participants can be limited. Under extreme circumstances a litter deposit can be required. A contact person can be designated.
4. Free Expression Zones can be assigned on a first come, first serve basis, but with no favor given to any particular group or particular message. However, an unduly restrictive limit on the number of groups is probably invalid.

5. Prohibitions against harassing patrons or the use of any loudspeaker or amplification devices can be imposed.
6. Certain extremely limited content restrictions on the message transmitted by those using Free Expression Zones have been upheld so that "fighting words", obscene material or "gruesome" displays can be prohibited.
7. The location of the free expression zones can to an extent be determined by management, but should be reasonably located to provide access to persons entering the fairgrounds, in a manner that does not create a public nuisance or safety hazard.
8. Public demonstrations on city or county streets and/or sidewalks can be allowed if the demonstrators comply with any local permit or other restrictions.
9. Restrictions within a paid gate, such as at a county fair, requiring activities to be limited to a paid booth will probably be upheld, so long as such restrictions do not limit individual actions such as person-to-person conversation and/or button wearing. If an enclosed amphitheater is involved presenting entertainment or sports event, a complete prohibition of leafleting, picketing or other activities within that facility can probably be allowed as long as reasonable space is provided outside the facility for

such activities (again, this can be the parking lot area).

B. Things which probably would not be allowed.

1. A total prohibition on any exercise of free speech or other First Amendment rights anywhere on the fairgrounds, except for rare instances when the entire fairground is utilized for a specific purpose and those activities would be inconsistent with that activity.
2. The requiring of "permit" for demonstrations within the free expression zone; provided however, advance registration or sign-up for such zones would probably be allowed.
3. A regulation which appears to give discretion to the manager or fair secretary to regulate the content of a particular message of an activity without specific limited guidelines such as preventing obscenity, the use of fighting words or the use of certain grisly displays.
4. Selection of groups to engage in First Amendment activities based upon the wishes of a lessee or the discretion of the manager or fair secretary and not based upon some objective criteria (such as first come, first serve or preference given to demonstrations "related" to the event). An example of a prohibited discretion would be allowing groups in "favor" of the event but not of groups "opposed" to the event.

5. Requiring absolutely under all circumstances, a fee for litter and/or a fee for security, even if you anticipate certain litter and security problems.
6. Requiring that names of all individuals engaged in First Amendment activity be disclosed and/or prohibiting the passing out of any pamphlets or literature which is not "signed" or bears the name of the organization.
7. Advance submittal of any literature to be passed out so that a manager can check it to see if it contains obscene material or other forms of objectionable speech, which can be regulated.

C. "Grey" areas for which no definitive answer can yet be given.

1. An absolute prohibition on all signs within an auditorium or within free expression zones -- however, courts have upheld reasonable limitations on the size of signs.
2. Whether the failure to obtain advance registration can justify denial of free speech activities if space is otherwise available.
3. Regulation of free speech activities in the absence of a written policy or guideline.
4. The requiring of a "hold harmless" clause for any free speech activities for Association liability purposes.

Let's examine some of these "grey areas" a little more closely. One of the most common requests received in considering First Amendment regulation was whether a fair could require a "hold harmless clause" from demonstrators. The purpose of the hold harmless clause is to "protect" the fair from any liability as a result of First Amendment activities. As indicated, this is a controversial area of law. While a hold harmless clause superficially has great appeal, you must remember that the allowance of citizens on your fairgrounds to engage in First Amendment activities does not necessarily equate to the Fair accepting liability for their activities. Almost all fairs in California are run by governmental agencies or non profit corporations on behalf of governmental agencies. Whether a county fair or a state district agricultural association, there are certain immunities in law which protect the activities on fair grounds from claims or lawsuits which otherwise might be allowed were they a private operation. Other states and private fairs should check with their own counsel to determine what rules govern their operations. The key word though is reasonableness - if there are immunities already in place to protect a fair association, is it reasonable to require a hold harmless clause to be executed as a condition to exercising free speech rights? In most cases, the answer would be no.

Further, there is a more pragmatic problem with the hold harmless concept. Many of the individuals or groups who wish to engage in First Amendment activities do not have funds sufficient

to cover the hold harmless promise. It would be in most cases a futile act to try to sue such groups or seek indemnification from them. But even doing so might leave a bad impression with the court reviewing your regulations. Courts have generally looked with disfavor on hold harmless requirements because it appears you are charging individuals for their right to engage in First Amendment activities.

Secondly, litter deposits seem reasonable. After all, much of this activity consists of passing out leaflets, and many of those leaflets end up discarded and may become a litter problem. Courts have upheld litter deposit requirements for activities within a paid gate, especially at a booth, feeling that if such requirement is uniformly part of a lease arrangement, it bears a rational relationship between a service provided by the fair. However, the line becomes a bit more gray when activities are occurring outside the paid gate and free expression zones are provided without cost. For under such circumstances, requiring a litter deposit again may be viewed by a court as requiring payment for First Amendment expressions. Further, unless the group has been at a particular fairgrounds before, one is without a factual foundation to allege that litter will result. Although one may well suspect (and those suspicions may be proven correct) that litter will result, a Fair manager cannot claim any specific experience with that individual or group to justify a litter deposit. A litter deposit probably is not worth the effort unless there has been actual and severe litter problems

experienced with a particular group and that group reappears. Under those circumstances there may be sufficient factual basis to require a reasonably modest litter fee.

Similarly, some fairs have expressed interest in requiring a security deposit or the providing at the expense of the individual or group, a security officer. Unless there is a demonstrated need, the courts would probably view the providing of security as a general governmental obligation even though the individual or group is engaged in First Amendment activities are being provided "free space." Thus on a normal basis, a requirement for a security deposit or providing of security services may be viewed as an unreasonable restriction on the exercise of such rights.

Requiring a "permit" has been upheld in the context of a private shopping center, where demonstrators wish to engage in activities within an enclosed mall. Most major metropolitan shopping centers now require advance obtaining of a permit by the individual or group wishing to use the shopping center for these activities. Courts have upheld this requirement partly because of the private nature of the mall. However, as public officers, we do not have the same freedom of operation over property that a private owner would have. Thus courts have been much more reluctant to approve a "permit" requirement for the exercise of First Amendment rights. Certainly, cities can require permits for parades or other major urban demonstrations or the blocking of sidewalks for picketing purposes. If narrowly drawn, these

ordinances have been upheld. However, under normal circumstances where free expression zones are created by your Association in the parking areas outside of a paid gate, requiring such a "permit" is not recommended.

However, advance "registration" if not a mandatory requirement, would probably be upheld. Advance registration on a first come, first serve basis is intended to assign available space to individuals or groups in a rational controllable manner. It is not intended to inhibit or prevent free speech. But it is important that such registration not be mandatory under all circumstances. It is unclear what courts would do if a registration requirement were part of your guidelines and noncompliance with that registration requirement was used as an excuse to prohibit free speech activities. On the other hand, a Fair need not accommodate every individual or group who appears simply because they demand access.

Thus, it is recommended that each fair association carefully examine whether an advance registration requirement should be part of its policy, but phrased in a way that does not make it absolutely binding, but leaves some discretion on "waiving" that requirement to the manager. The waiver requirements should be set forth in the regulations so that the manager is not in the position of having too much discretion in administering the policy.

Registration should assign space to an individual or group on a first-come, first-serve basis and reasonable limitations can

be placed on the number of individuals in each space or the number of spaces available to any particular individual or group. Courts have upheld such restrictions on the number of individuals or the size of tables. Again using reasonableness as a guide, courts favor providing space to a wide variety of opinions instead of allowing one viewpoint to monopolize available space to the exclusion of others. Similarly, some courts have upheld the requirement that "a contact person" be designated. While courts have not allowed the government to require the providing the names and addresses of all participants in First Amendment activities, the purpose of a contact person is to allow the government to have reasonable access to a reasonable spokesperson for that group in order to deal with any problems that arise. Again the emphasis should be on reasonableness -- that is reasonable to require the naming of one contact individual for this purpose.

Registration should not be accompanied by a fee requirement. If a booth is to be rented to groups for First Amendment purposes, say at a county fair, of course a fee can be required, and can certainly be at the same level for rental of other similar size booths.

The next topic is whether content of speech should be regulated. Mention has been made of terms like "fighting words," "obscene," and "gruesome displays." These are terms of art whose definitions which come from various cases and are examples of categories of speech which the courts have held can be prohibited

or regulated. But, as one supreme court justice once said, "I may not be able to define obscenity, but I know it when I read it." The problem, of course, is how to define "fighting words" or "obscenity" in a way that will pass constitutional review. This has been attempted in the model guideline language using wherever possible the exact definitions provided by the courts themselves. However, some terms have never been defined. Recently a California appellate court said it would be all right to prohibit "grisly or gruesome displays." The court did not, however, define what constituted a "grisly or gruesome" display. The example they gave, an anti abortion group with pictures of aborted fetuses at a shopping mall, was considered inappropriate for the shopping center.

Any content regulation treads on thin ice. While courts believe that it is not necessary to allow language which would shock or offend the average person, courts are also most reluctant to allow prior censorship of language. Thus on one hand, the courts say obscene material or messages can be prohibited, but on the other hand courts have almost uniformly said that prior submittal of such literature for screening cannot normally be required! Obviously, the dilemma of how to protect patrons from such non-protected obscene speech is left to the creativity of the individual manager.

It is suggested that there be no requirement that literature be submitted for advance screening. However, since literature that is passed out to the public is available to anyone including

employees and a fair manager or secretary, it is suggested that it be the practice to obtain this literature as soon as possible, review it, and if it is believed that the literature meets any of the above categories, consider whether prohibiting the literature is appropriate. Again, in case of doubt, contact an attorney.

So far, this general discussion on First Amendment issues has probably raised more questions than it has answered. One thing that courts have not definitively answered, but which should be of concern to a manager or board member of a Fair is the need to let everyone know what the rules are. The purpose of the attached guidelines is to present ideas on what those rules could be. Adoption of guidelines and their distribution is recommended. The terms "regulation," or "guidelines" are used interchangeably. There is an important difference however. Written guidelines governing conduct of fair employees and your association are recommended to help in a successful defense of any disagreement between the association and individuals asserting First Amendment rights. However, "regulations" in the traditional sense of the term, as binding and rigid, are probably counterproductive. Guidelines is a preferable term in that these provisions are intended to be "guidelines" governing the conduct of employees and the public. But they should be flexible and somewhat amenable to changing circumstances. Again, the bottom line is "reasonableness" -- are the guidelines and any particular provision of them reasonably related to a legitimate need of your association, while still maintaining to the maximum extent

possible the First Amendment rights of the individual or group. That should be the test for any proposed guideline.

A brief reference to the impact of the Unruh Civil Rights Act, codified in Civil Code section 51, as it may relate to fair activities is appropriate here. This provision of law basically prohibits any discrimination in the providing of facilities or access to the facilities, on the basis of race, religion, creed, sexual orientation or any other group characteristic such as manner of dress or length of hair. Some cases have limited claims under the Unruh Act to those categories, while others have indicated that manner of dress or perhaps other criteria may also be protected.

Issues arise under the Unruh Act in the context of excluding patrons from a fair or any particular facility within the fair. For example, recently a question arose whether a facility could exclude known gang members from certain events, where fights had occurred between rival gangs. This is not an isolated event unfortunately, and a policy might address exclusion of patrons. But it should do so in the most general and unobtrusive way possible. Exclusion of any group on a wholesale basis would probably not be upheld, unless there are specific and reasonable facts to indicate that a strong reason justifies the exclusion and no less drastic step would be effective. One fair, for example, required that "colors," that is the identifying pieces of clothing worn by gang members, be "checked" at the door before allowing gang members in, based upon a past history of gang

violence. Another association has required gang members displaying "colors" to be checked for weapons. Obviously, after-the-fact remedies are available such as expulsion from a facility or the grounds of your fairgrounds for any fights or other disruptions that occur. However, a post facto remedy often is not sufficient, nor may it adequately protect the public. On the other hand, courts look with great disfavor upon any open-ended policy which vests discretion in an employee to exclude persons whom that employee "believes" are undesirable. Increased security might be a better choice than a cumbersome mechanism for prior exclusion. Where a group can be identified, certain injunctive relief is also available to prevent violence, but again this may be difficult to obtain and certainly difficult to enforce.

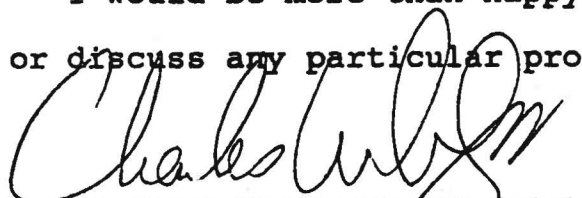
Any position which focuses more on individuals and is based upon specific facts relating to that individual may form the basis for a defensible exclusion policy (herein). Action addressing these types of problems should be worked out with advice from assigned counsel.

CONCLUSION

It would be appropriate to mention those people who have assisted in the preparation of this memorandum and who served on the review committees. I would like to thank Carol Chesbrough, an attorney with Fairs and Expositions, and Deputy Attorneys General Hal Eisenberg and Ellen Peter who served on our review committee. Ester Armstrong of the California Division of Fairs

and Expositions also provided ideas and valuable support. Laura Trout, an aide to Senator Rose Ann Vuich has long been a proponent of fairs and exposition issues, and has supported the need for these guidelines. Numerous fair managers and board of directors members reviewed the rough draft guideline language and provided valuable input from an operating standpoint, on what would work and would not work.

I would be more than happy to explain any of these provisions or discuss any particular problem you may have.



CHARLES W. GETZ, IV
Deputy Attorney General

ATTACHMENT I

PROPOSED MODEL LANGUAGE FOR FIRST AMENDMENT EXPRESSION GUIDELINES

A. Comprehensive Language Governing Permissible Regulatory Conduct

The first section of these guidelines contains illustrations of provisions which comprehensively deal with First Amendment activities. These may be more comprehensive than needed for many fairs. Thus, the second section illustrates guidelines in a "short form" for use with facilities and operations not requiring the former. It is strongly recommended that the short form "B" be used as a model for most circumstances; the longer format is provided purely for completeness and in recognition of the differences among fairgrounds.

Suggested guideline language (and it is only suggested guideline language) is placed in "quotations." Any parenthesis in the language or gaps in the language represent areas where you should insert specific information or facts unique to your association. By nature, these guidelines must be rather general. They will consequently not necessarily fit your particular situation or perhaps meet your particular needs to the letter. They are intended to be reviewed by your attorney and portions adopted as your needs dictate.

Language explaining each provision can be found immediately after the quoted guideline language in (parentheses). Again, these explanations are intended to illustrate how that particular proposed guideline language would be used and under what

circumstances it might apply.

Part B of this section presents a proposed guideline for those associations who want to adopt the most defensible and simple approach to First Amendment activities. This proposed guideline contains a minimum of findings, definitions and allowance of free expression activities in "free expression zones."

Both policies, parts A and B, contain certain common elements. For example, it is strongly recommended that any guidelines contain findings by your governing board. These findings outline the need for the guidelines, and the reason behind them. Further, definitions are also important. Prohibiting "obscene material" without defining what the association considers to be "obscene" almost automatically vests too much discretion in association employees. Thus, definitions can serve an important purpose. Of course, the operational language of the policy itself should be clear, concise and understandable to lay person.

The danger in any guideline is to perhaps to be over-encompassing -- to adopt too complicated a policy, anticipating too many problems. Each of you in examining these guidelines should choose critically only those provisions which you feel are absolutely necessary. The more narrow the regulation and the more tailored, the more defensible.

The guideline language is intended to comply with judicial decisions addressing free speech requirements. The language is

not intended to evade those requirements or pay lip service to them. In context, the parenthetical comments on each guideline insofar as they mention "courts," are intended to advise you that this is the kind of language courts have cited as being acceptable.

Let's now look at the menu of options available to your association to adopt either as operating regulations or preferably as guidelines. Please review these with your attorney as he or she is better situated to be aware of your needs concerns:

"Section 1 - Findings"

"The _____ Association finds that the following guidelines are intended to govern the conduct of the Association employees and members of the public and in particular, to govern any conduct occurring under the First Amendment to the United States Constitution and article I, section 2 to the California Constitution. These guidelines are not intended to enlarge upon any rights provided for by law nor waive any defense available to the Association, nor do they represent any admission that the facilities of the Association are open as a public forum for the expression of ideas or beliefs under the First Amendment of the United States Constitution or article I, section 2 of the California Constitution. The _____ Association in adopting these guidelines further finds that they are

intended to set forth in writing, the Association's long-standing policy governing the conduct of Association employees and members of the public under the aforementioned provisions of the United States and California Constitutions.

"It is the policy of this Association to allow within the parameters set forth herein, reasonable access in designated free speech expression zones for demonstrations as allowed by the First Amendment to the United States Constitution and similar provisions in the California Constitution. These provisions are intended to act as guidelines for reasonable regulation of time, place and manner of speech, and except as expressly provided therein, are not intended to govern content of speech."

(Comment: Adoption of the first paragraph or some form of the first paragraph is recommended since it explains the purpose of the policy guidelines. The second paragraph is also important for a number of reasons. First of all, it does state that the guidelines are nothing "new" -- that is, they are merely codification of policies which most fairs have informally adopted over the years. Secondly, it specifically states that the interest of the association is not to regulate content of speech -- a prohibited activity -- but rather to regulate time, place and manner, which is generally allowed. A third paragraph may be added to this guideline describing the physical plant of your

fairgrounds; it would provide if necessary, a reviewing court with some understanding of the size of the fairgrounds, the purpose of the fairgrounds, and perhaps even the purpose of some of the events held at the fairgrounds. In order to illustrate how this might appear, the following is how a court described a fairground:

("The Bloom County Fairgrounds consists of 100 total acres, including parking areas, permanent buildings and other structures, restricted areas and carnival rides, reducing the public walking area to approximately 35 acres. The Bloom County fairgrounds and the Association sponsor the annual Bloom County Fair Days, generally occurring in the fall. During the ten days of the Fair, large numbers of people attend with traditionally the highest attendance day being in excess of 50,000 people. There is a reasonable amount of congestion throughout the run of the Fair and it can become quite congested during peak attendance periods. The Association also leases the Bloom County Fairgrounds or portions of it to a wide variety of private and community groups for various entertainment, sports, and community activities. These lease arrangements are made pursuant to a written lease contains terms governing the conduct of the parties. Such leases are an important source of income for the Association and also provide a needed service to the community. Most of these leased activities focus on a particular event, such as a sporting event or an

entertainment event and are thus not intended to create a public forum for debate of ideas or concepts.")

(The above language is not intended to be controlling, but does illustrate some of the elements that you may wish to consider in a tailored finding concerning the physical plant and activities of your particular association.)

"Section 2 - Definitions"

"1. 'Public Forum' - A public forum is an event wherein the facilities are available to members of the public for a free and open discussion or debate political on social issues.

"2. 'Limited Public Forum' - A limited public forum is an event wherein the public is allowed access to a facility or facilities for specific purposes and where any public debate or discussion on political or social issues is focused on a particular subject or subjects. A limited public forum is not intended by the Association to generate a 'public forum' as that term is defined herein.

"3. 'Commercial Activity' - Commercial activity is that conduct whose primary purpose is expression or communication of ideas or demonstrations of products or the sale of any products or commodities in a transaction involving the exchange of money or credits or with the intent of engaging in such transactions involving exchange of money or credits, or for the purpose of obtaining

business or engaging in business or commerce.

"4. 'Non-Commercial Activity' - A non-commercial activity is that activity whose primary purpose is the expression or communication of political or social ideas or causes and which do not involve commercial transactions, or the obtaining of any business, or the engaging in of commerce.

"5. 'On-site' - On-site means any activities occurring within the grounds or parking lot of the _____ Association.

"6. 'Off-site' - Off-site refers to those public and private land surrounding the grounds of the Association.

"7. 'Enclosed Facility' - An enclosed facility means any structure contained on the grounds of the Association and/or any other enclosed or semi-enclosed building or structure of any nature whatsoever located on-site.

"8. 'Free Expression Zone' - A free expression zone is a designated area located on-site as established by the Association's (Board of Directors or other governing body) at which members of the public may be provided reasonable access in accordance with these guidelines for purposes of conducting free speech activities.

"9. 'Free Speech Activities' - For purposes of these guidelines, "free speech activities" means individual or group display of signs other than specifically allowed herein; picketing, leafleting, collection of signatures or

marching and any group activity involving the communication or expression, either orally or by conduct of views and/or grievances, and which has the effect and intent or propensity to express that view or grievance to others. As used in these guidelines, neither the definition of or limitations on "free speech activities" includes one-on-one voluntary discussions or individual wearing of buttons or symbolic clothing.

"10. 'Fighting Words' - Fighting words are those words which when addressed to the ordinary person are, as a matter of common knowledge, inherently likely to provoke an immediate violent reaction.

"11. 'Obscene' - Obscene means any sexually explicit material or communication which appeals to prurient interests and is patently offensive or abhorrent to the prevailing concepts of morality or decency in the community in which the Association exists.

"12. 'Sound Devices' - Sound devices include any loudspeakers, megaphones or other devices, electrical or mechanical, which amplify or transmit sound waves. Included in this definition are forms of sound which are not mechanically amplified such as group chanting or singing.

"13. 'Spontaneous' - Spontaneous means that conduct or activity which is not premeditated and is based upon impulse or arises from inherent qualities without external cause, or is self-generated.

"14. 'Paid Gate' - A paid gate is that area of the grounds of the Association on-site, the entry to which is restricted and predicated upon purchase of a ticket or entitlement prior to entry. This can include the general area of the Association enclosed by a fence, and/or any particular building within the Association's grounds."

(Comment: Some of the definitions may not be applicable to your adopted guidelines. The simple rule of thumb is that if any of these terms appear in the operative language of your guidelines, define them. If the term does not appear in your guidelines, it is probably better not to define it. As a final note, you should arrange your definitional section in alphabetical order for ease of reference.)

"Section 3 - On-site Free Speech Activities"

"1. Findings: The Association finds that (optional - with the exception of the annual County Fair), no public forum events are sponsored or take place upon grounds of the Association. It is the policy of the Association nevertheless, to allow free speech activity wherever said activity is not inconsistent with the normal operations or activities of the Association. The Association finds, however, that due to the unique nature of the grounds of the Association, there is limited access necessitating creation of free expression zones. The Association specifically finds that the buildings and grounds comprising the Association's fairgrounds are generally surrounded by

parking areas under the control of the Associations, but which areas become congested with numerous vehicles during events. The Association further finds that pedestrian traffic is generally confined to narrow walkways to and from these parking areas to the various gates of the fairgrounds and that the designated free expression zones are designed to balance the interests of those engaged in free speech activity and being given reasonable access to the patrons of events of the Association, and the safety of the patrons and prevention of accidents or congestion which could lead to injury.

"Further, the Association finds that these guidelines in the providing of free expression zones are balanced to protect the interests of patrons attending events upon the Association's fairgrounds from inappropriate activity or conduct by those engaged in free speech activity, with the interest of those engaged in such free speech activities. The Association's solution to this balancing of interests is designation of free expression zones and restrictions on time, place and manner of said expressions to ensure reasonable access by those engaged in free expression activity to those attending the fairgrounds, while protecting the overall safety of the public. (Optional - in addition, the Association finds that for the _____ County Fair, for-rent booths are provided anyone on a first come, first serve basis in addition to free expression

zones)."

(Comment: The above language is illustrative. It should be tailored to the situation at a particular fair. This is the part of the guidelines which will be most closely examined by a reviewing court. It is important to communicate to that court the reasons for any restrictions placed on free speech activities, and to explain any physical constraints applicable to your fairground.

As you can see from the optional language suggested, your association may also wish to provide paid booth space inside the paid gate to individuals or groups engaged in free expression activity, but you should designate exactly when this would occur, say at a county fair.

Overall, the findings are intended to explain that congestion, safety and balancing of interests lie behind the policy of the association to provide free expression zones outside a paid gate. For those associations with limited space, and where the parking areas are simply not amenable to such free expression zones, nothing prevents providing free free-expression zones within the paid gate and if these are provided, you should note that greater flexibility on locating these zones is allowed by the courts. Such zones need not be centrally located within the fairgrounds themselves nor provide access to all patrons. On the other hand, as we will see in Section 2 below, free expression zones located outside a paid gate (traditionally within the parking areas) should strive to provide reasonable

access to patrons attending the events.)

"2. Free Expression Zones: The Association shall designate free expression zones on site for the purpose of providing access for free speech activity. These zones shall be selected by the Association and shall be designated on the map of the fairgrounds. The area selected by the Association shall be selected to provide maximum reasonable access by those involved in First Amendment activities to patrons of the Fair, commensurate with public safety as well as the safety of those individuals engaged in such activity, and shall interfere to the minimal extent possible with the free flow and passage of patrons to and from the parking areas and the Association's fairground. The zones shall be clearly marked and shall have a sign posted by the Association, which sign shall state that the views expressed by those utilizing the free expression zones are not necessarily the views of the Association."

(Comment: This section discusses location of zones and by nature must be general. Certainly, if you provide multiple free expression zones, designation on a map is absolutely crucial. Otherwise, if a single zone will suffice, it can be described within the guideline language itself (for example, "that area on either side of the main gate of the fairground extending 6' wide by 10' long"). The map can be attached as an exhibit to the guidelines or incorporated as part of the guidelines. There is

no magic formula to where these zones should be located, but a balance of interests should be considered. A problem, however, may result if the zones were located in the back regions of the parking area, for example, where patrons can easily evade them. On the other hand, there certainly is no requirement that the zones be located right next to the ticket windows; especially, if that would interfere with the sale of tickets or subject a "captive audience" (patrons waiting in line) to messages they may not wish to receive.

(An ideal location may be along pedestrian walkways from the major parking areas to the various gates of the fairgrounds. Further, these zones, although designated on a map, may be restricted depending upon the event. For an event, for example using Gate No. 2 only, probably it would not be necessary to provide free expression zones covering all the remaining gates for that event. Traffic safety may be balanced with providing at least arguably reasonable access to those attending the event.)

"3. On-site Registration: Organizations or individuals desiring to engage in free speech activity on site should register with the Association prior to the event. The purpose of registration is not to censor or in any way or review discretionarily the content of the speech involved, but to allow sufficient opportunity for the Association to assign space for free speech activities and to provide the participants with copies of those rules governing the use of free expression zones. Registration

will be granted on a first come, first serve basis. A request for registration may be made prior to the planned event if feasible, but not more than 30 days prior to the planned event at the offices of the Association.

Registration can also occur on the day of the proposed event as set forth herein. Information provided shall include:

- (a) The time of the planned event;
- (b) The nature of the planned activity;
- (c) The approximate number of persons proposed to be involved provided that no more than x shall be assigned to each zone;
- (d) A designated contact person, including a means of communication of said person such as an address or phone number.

"If same day notice is given, it will be up to the Association's agent and/or manager to determine if sufficient space is available to accommodate the request. In evaluating the registration, the Association will not discriminate on the basis of content of ideas or beliefs. The Association may, however, require certain individual or organizations to engage in free speech activities in different areas of the fairgrounds or to maintain a reasonable distance from other individual or associations, if there is a reasonable belief in the minds of the employees of the Association that there may be conflict among or between various individuals or groups, or if groups

with competing views or incompatible philosophies have requested the use of the same general area on the same date and during the same hours."

(Comment: As with other provisions of these guidelines, this paragraph is submitted only if needed. If not needed, it is not recommended. Consult your attorney if in doubt. Many courts are troubled by the concept of an individual or group obtaining "governmental permission" to engage in First Amendment activities. On the other hand, 50 to 100 individuals showing up to demonstrate in a six by ten free expression zone (the dimensions here are not magical - any reasonable size will be probably be upheld) may result in such confusion or congestion that advance registration can be justified. However, restrictions in the number of those persons engaged in free speech activity in a particular zone might be a preferable choice as shown by the following provisions. Again, consult your attorneys for specific advice on whether or not to require advance registration. If you decide to require advance registration, make sure that the language is not absolutely mandatory, and is somewhat flexible, in order to avoid placing unreasonable burdens on those who wish to exercise First Amendment rights.)

"4. Any organizations or individuals seeking to engage in First Amendment activities shall ensure their conduct and the use of any signs, banners, or other devices do not

result in injuries to patrons or property: persons engaged in First Amendment activities shall comply with the following restrictions on time, place and manner:

(a) No signs or banners may be used which exceed _____ by _____ feet, in order to protect the safety of the patrons and those engaged in free speech activity;

(b) No individual or group, sign or banner or individual activity shall block the free movement of patrons, concessionaires, employees, lessees or those providing emergency services or obstruct freedom of passage to and from the fairgrounds;

(c) No individual or group engaged in free expression activity shall represent to anyone that the views they express are the necessarily the views of the Association or that the Association in any way condones or supports said views;

(d) Patrons declining to listen, converse or provide a donation or signature or accept any item offered by those engaged in free speech activities shall not be pursued or touched once that patron has clearly indicated he or she wishes to be left alone;

(e) No one using free expression zone shall leave said zone for purposes of engaging in free expression activity or conducting any such activity originated in the free expression zone;

(f) No more than _____ individuals from any one group shall be assigned space within any one free expression zone;

(g) Those individuals or groups engaged in free expression activities shall provide their own card table and chairs, but no more than _____ card tables and chairs shall be used in any free expression zone by any one group, and said table(s) shall be no bigger than _____ by _____ feet;

(h) No one shall use signs or displays, or pass out or show literature which employ fighting words, obscenities, or gruesome, grisly or repulsive exhibits or pictures;

(i) No one shall use any sound devices without special prior written approval of the Association, and the use of any permitted sound device shall not create a nuisance or noise of sufficient volume to impinge upon the hearing of patrons more than a few feet away from the free expression zone, nor shall be used to broadcast any fighting words or obscenities.

(j) Individuals or groups utilizing free expression zones will occupy such areas no earlier than _____ hours prior to the event (this can vary) or no less than _____ hours prior to the closing of the event (again, this can vary).

(k) If funds are solicited, they will not be

demanded nor required in return for any materials. This prohibition shall not be construed as preventing all solicitations of voluntary contributions.

(l) Any vehicles brought on the fairgrounds by those persons engaged in free expression activities shall be parked in the public pay lots and regular parking fees shall be paid, or on surrounding public parking areas off site.

(m) There shall be no free expression activities within _____ feet of any entrance, exit gate or ticket booth at any time.

(n) The violation of any of the terms of these conditions shall be reasonable grounds for discontinuance by the Association of such activity and/or expulsion of the grounds of the Association."

(Comment: Although this laundry list may appear complete, no doubt additional terms or differently worded terms can be suggested. One area of most concern by any Fair Association is its ability to restrict the numbers of individuals engaged in free speech activity and the equipment they are allowed to bring. For example, you can limit the type and number of tables, chairs and other materials, which the Association would allow. The following guideline is another way of restating the language in paragraphs 4(f)(g)(h).)

"5. The following equipment may be brought onto the

fairground for use in free expression activities within the designated free expression zone:

(a) An eight foot table (maximum length) and four chairs at each allowable location (or whatever length and number);

(b) Signs which may be placed on the table or directly in front of the table only. The maximum signage area for any particular location shall not exceed _____ feet in height by _____ feet in width;

(c) Any necessary pens, pencils, paper clips or clip boards and leaflets, provided, however, that any leaflets shall be weighted so that they are secured and not subject to being blown off the table.

(d) There shall be no sale or offer to sell of any merchandise or services of any kind, including the taking of orders for merchandise or services, at any free expression zone. These prohibitions shall not be construed as preventing individuals utilizing free expression zones from soliciting voluntary contributions."

(Comment: Other options could include a total ban on any use of sound devices or amplification, and certainly the number of persons using each zone can be generally restricted. The language prohibiting sales of materials covers solicitation of funds by individuals or groups. Generally, solicitation should

be allowed in free expression zones for voluntary contributions. However, if that "solicitation" crosses the line and in effect becomes "commercial activity," the association can restrict such activity. Otherwise, a clever commercial supplier might request a table at a "free expression zone" with the intent of selling products or taking orders for products and thus defeat the intended purpose of such zones.)

(Restricting activity within a specified distance of a gate or entry may be allowed on the theory that free expression zones should not be located too close to gates which might subject patrons who are standing in line to purchase tickets to a message that they may not wish to hear. Courts have been reluctant to allow First Amendment activities in a "captive audience" situation where, for example, customers may be standing in line for tickets or admission. In other words, anyone has the right to engage in conversation with any other person without government regulation. However, the association has the right to protect patrons in a "captive audience" who are not free to walk away.)

"6. If free speech activity cannot be allowed or no free expression zones are available, the Association will attempt to identify alternatives or alternative areas, including off-site areas, for the organization or individual to engage in such activities. The purpose of this section is for those times when free speech zones are fully occupied or there is some problem with a proposal."

(Comment: Rather than mere out of hand rejection, it would be helpful to suggest other alternative which may or may not be available to the group, such as removing the impediment which violates the association's rules or suggesting an off-site demonstration if on-site areas are filled.)

"7. If the area encompassing the free speech zones are leased in whole or in part so that free speech activity would be inconsistent with the leased activity, such zones will not be provided for that specific event unless the lessee agrees to the providing of such zones or the Association can find that the zones would not interfere with the event or violate any terms of the lease."

(Comment: Caution is urged with this language. This is a murky area of law. There may be rare instances when you would wish to use this language but only after your counsel can fully advise you on its potential problems! It should not be misinterpreted that a lessee can defeat expression of First Amendment rights. On the other hand, there are occasions when a parking lot is leased on event-by-event basis (such as for flea markets or perhaps certain kinds of trade shows). Certainly, it would be unreasonable to expect the association to bear the burden of providing free expression zones in the middle of a particular event. The best advice is to judge the use of this provision on a case-by-case basis.)

"8. If a limited public forum event occurs, on-site free speech activities shall be allowed in accordance with

these provisions, but the Association may give preference to those organizations, groups or individuals with related subject matter to the particular event, and thereafter to anyone on a first come, first serve basis. Those individuals or groups with the related subject matter shall be afforded space on a first come, first serve basis within that group."

(Comment: Again, caution is urged in adopting this language -- this comes perilously close to content regulation. Again, this is an unsettled area, and again, use only in rare cases, as cautioned above. The intent of this provision is to encourage event-related groups to have first priority on space. For example, in the case of a rodeo, persons protesting animal rights abuses might be given preference over the International Krishna Consciousness Society, if space is tight. In the question and answer area, I deal with the problem of discriminating against "controversial" groups. The reason that this restriction is only applicable to "limited (or focused) public forum events" is to emphasize that where the event by its very nature invites debate only in limited areas, it is a reasonable restriction of time, place and manner to give preference to individuals or groups related to that event.)

"Section 4 - Free Speech Activities Within an Enclosed Facility"

"1. Findings: The Association finds that there are no public forum events at or within an enclosed facility."

Further, the Association finds that along with the nature of the events, the congested nature of the enclosed facilities located on the fairgrounds of the Association are such that with congested public access, limited ingress and egress, the historic numbers of patrons at various events, and the general practice of the Association to rent an enclosed facility or enclosed facilities entirely to lessee, no free speech activities can be allowed within an enclosed facility.

(Comment: Again, this language is illustrative. If a similar finding is used it should describe the situation at the specified Fair.)

"2. As an alternative, the Association has provided on-site free expression zones and it is the intent of the Association that these zones act to provide reasonable access to patrons utilizing the enclosed facilities, rendering the need for expression activities within the enclosed facility unnecessary."

(Comment: This finding is intended to address the reasons for the first finding above if applicable denying space inside the gates. The language is illustrative.)

"3. Anyone desiring to engage in free speech activities in an enclosed facility or within a paid gate should do so under an agreement for exhibit space (or lease -- use whatever terms is appropriate) if the event is one under the sponsorship or control of the Association. If the

event is sponsored or controlled by a lessee of the Association, then free speech activity shall be allowed only if the lessee leasing the facility in whole or in part subleases space for that activity if allowed by the terms of the agreement. The Association recognizes that it acts as a leasing agent under certain circumstances leasing the facility and that the utilization of the space is subject to reasonable control by the lessee and is dictated by the terms of the lease."

(Comment: The purpose of this section is to explain that where a facility is rented, the lessee has a right to use the entire facility. Any free speech activity may thus be inconsistent with the use -- regardless of the content of the speech. On the other hand, the lessee may wish to allow, for a fee, subleasing of space by various groups including those engaged in free speech activity. The guidelines therefore should be flexible enough to allow this.)

"4. Anyone desiring to engage in free speech activities in an enclosed facility in an event controlled or sponsored by the Association, and where the Association finds such free speech activities are consistent with the event, shall execute the appropriate agreement or lease for exhibit space, subject to the terms and conditions generally applicable to anyone entering into such agreements, and such other reasonable conditions as may be imposed. The Association maintains the right to assign

space within its enclosed facilities or paid gate pursuant to an agreement for exhibit space based upon a first come, first serve basis, or (seniority or past practices in granting such space)."

"5. If exhibit space is not available to those wishing to obtain such space in an Association-controlled sponsored event, the Association shall make reasonable efforts to provide on-site space in a free expression zone, subject to the provisions in these guidelines governing such free expression zones."

(Comment: These sections are self-explanatory, but are intended to provide the maximum flexibility to the association and providing space on-site or behind a paid gate for anyone engaged in free expression activities. These sections, for example, would govern the providing of booth space at a county fair for a fee or such other events where the association itself has some control over the leasing of its grounds. It would probably not control for a boat or car show where the various exhibit halls and other spaces are provided by lease to a promoter. These sections should be examined by your local attorney to determine which language is applicable to your situation. Note the provision, however, that provides for overflow crowds or those who cannot afford the fee. The purpose of the reference to free expression zones is intended to demonstrate to a court that the association is not attempting to defeat free expression of ideas by charging a fee or requiring

that only rented space be utilized.)

"Section 5 - Off-Site Activity"

"Any persons engaged in off-site free speech activity in the immediate area adjacent to the Association's fairgrounds shall demonstrate to the designated agent of the Association any requisite and lawful required county or city permit allowing said demonstration. The Association retains all rights as a land owner to protect its property interest and to ensure that all off-site demonstrations are carried out in accordance with law."

"Section 6 - Violation of Guidelines"

"Any person or persons engaged in free speech activity who violates these guidelines shall be subject to the following administrative remedies:

(a) If no registration has been obtained, the Association's agent may require that such person or group register and obtain a space allocation. Refusal to provide the information requested or abide by the space allocation may be cause for ejection from the grounds;

(b) If an organization or individual is engaged in activity in violation of these guidelines, an initial warning shall be issued where possible. If the activity in violation continues, the activity shall be stopped and the violation shall be cause for immediate ejection from the grounds by the Association or its authorized agent;

(c) Anyone engaged in any violence or who provokes any

violence shall be immediately ejected from the grounds;

(d) Anyone displaying fighting words, obscene material or grisly, gruesome or repulsive displays may be subject to having said materials or displays seized by the Association and its agents. Upon demand said material or displays may be returned to said organization or individuals after the event is over and/or after the free speech activities are concluded, or upon departure."

(e) Anyone using any sound devices without prior written approval of the Association or its authorization shall immediately cease using said sound device upon demand and/or may have said sound device confiscated by the Association or its agent. Upon request, said sound device shall be returned to the individual or organization upon conclusion of the event or free speech activities, or upon departure.

(f) Nothing in these provisions regarding violations of guidelines shall require the Association to exhaust any remedies, to necessarily give any oral warnings, or to compromise or limit in any way, any remedies provided by law."

(Comment: It is important that reasonableness in enforcement be maintained. That is why one provision suggests an initial warning if at all possible. However, since the severity of the violation will vary, some flexibility is built in to allow immediate ejection for extreme cases. It has been the

experience of some fair managers with free expression zones, that the individuals using those zones are reluctant to stay within their boundaries. Certainly a warning not to leave the area or to pursue an patron should be sufficient, but if not, ejection could be appropriate. However, the best advice is to check any individual factual situation with your attorney.)

B. "Short Form" Policy Guidelines:

(The following guidelines are proposed as a model short form policy for those associations who wish to adopt guidelines which are most defensible and also not overly complicated. Where identical language to that already presented above appears, the earlier language is referenced rather than repeating it. Again, the language is illustrative if applicable. You should go over it with your attorney and tailor them to your needs.)

"Section 1 - Findings:"

"The _____ Association hereby finds that these guidelines are intended to set forth in writing the Association's longstanding policy governing the conduct of Association employees as well as members of the public. Under the First Amendment to the United States Constitution and article I of the California Constitution, on the Association's grounds.

"These guidelines are not intended to enlarge upon nor create any rights guaranteed by existing law nor waive any defenses or rights available to the Association, nor do they represent any admission that the facilities of the Association are open as a public forum. It is the policy of this Association

to allow within the parameters set forth herein, reasonable access to its grounds and designated free speech expression zones for demonstrations for free speech activity as allowed by the First Amendment to the United States Constitution and article I to the California Constitution. These provisions are intended to act as guidelines as reasonable regulation of time, place and manner and not content of speech."

"Section 2 - Definitions:"

1. Public Forum - repeat from above.
2. Limited Public Form - repeat from above.
3. On-site - repeat from above.
4. Off-site - repeat from above.
5. Enclosed Facility - repeat from above.
6. Free Expression Zone - repeat from above.
7. Free Speech Activity - repeat from above.
8. Sound Devices - repeat from above.
9. Paid Gate - repeat from above.

"Section 3 - Findings:"

"The Association finds that due to the unique nature of the grounds of the Association, there is limited access necessitating creation of free expression zones. These zones are intended to provide reasonable access to those individuals or groups engaged in free speech activities while protecting the health and safety of the general public. The Association further finds that pedestrian traffic is confined to narrow walkways to and from parking areas where free speech expression zones are located and

that the designated zones are designed to balance the interests of those individuals engaged in free speech activity and being given reasonable access to the general public, and the safety of the general public and the prevention of accidents or congestion which could lead to injury." (Note: This last sentence may or may not be applicable -- also add a section with a factual description of your fairgrounds)

"Section 4 - Free Expression Zones:"

"The Association shall designate free expression zones on-site for purposes of free expression activity. These zones shall be situated in such manner as to allow reasonable access to those members of the general public attending an event at the Association's fairgrounds and shall be designated on a map. The zones shall be clearly marked and shall have a sign posted by the Association which states the views expressed by those utilizing these zones are not necessarily those of the Association. In locating the zones, the Association shall consider, public safety and shall locate them in a way to avoid congestion, while maximizing public access by those engaged in free speech activities to those attending events. Use of these free expression zones shall be available on first come, first serve basis, provided that those utilizing the free expression zones shall comply with the requirements and restrictions on time, place and manner set forth in Section 5 infra."

"Section 5 - Conditions for Use of Free Expression Zones:"

"Wherever possible, those utilizing a free expression zone

shall notify the management of the Association in advance to allow scheduling on a first come, first serve basis. If no advance notice is given, the Association shall attempt to provide space in free expression zones on a first come, first service basis. The Association reserves rights to assign such space or to move individuals or groups between or among zones depending upon the Association's needs and to prevent any violence or misunderstanding due to use of said zones by individuals or groups with conflicting philosophies or where violence may reasonably be anticipated. Those utilizing free expression zones will abide by the following restrictions:

(a) No signs or banners may be used which exceed ____ by ____ feet, in order to protect the safety of patrons and those engaged in free speech activities.

(b) The following equipment may be brought into a free expression zone for use in free express activities:

(1) An ____ foot long table (maximum length) and _____ chairs at each allowable location;

(2) Signs which may be placed on the table or directly in front of the table only, subject to the size restriction noted above;

(3) Necessary pens, pencils, paper clips, clip board and leaflets or other materials to be disseminated to the public, provided that said material shall be secured to prevent littering.

(c) No individual utilizing free expression zones

shall state or imply that the views they express are the views of the Association.

(d) No one utilizing a free expression zone shall block the movement of patrons, concessionaires, employees, lessees or those providing emergency services. No one shall physically restrain any other individual or block the free passage of such individuals or vehicles.

(e) Patrons declining to listen, converse or provide a donation or signature or accept any item offered may not be touched or pursued once the individual has clearly indicated he or she wishes to be left alone.

(f) No free expression activity shall occur outside of the designated free expression zones or within ___ feet of the entrance gate (or ticket booth, etc.).

(g) No one utilizing a free expression zone shall interfere with parking attendants or individual patrons attempting to park cars, or operate in such manner as to obstruct the efficient and safe parking of cars by attendants or event patrons.

(h) Those utilizing free expression zones shall do so in a way that they do not block, delay or hinder the free passage of any member of the public or obstruct or divert the ordinary flow of vehicular pedestrian traffic.

(i) No one shall utilize signs or displays or disseminate literature which employs fighting words, obscenities or presents gruesome, grisly or repulsive

displays.

(j) No one utilizing a free expression zone shall use or employ any sound device without prior written approval of the Association and the use of any permitted sound device shall not create a nuisance or noise of sufficient volume to impinge upon the hearing of patrons more than a few feet away from the free expression zone nor be used to broadcast any fighting words or obscenities.

(k) There shall be no sale or offer for sale of any merchandise or services of any kind, including the taking of orders from merchandise or services. Funds will not be demanded or requested in return for any written materials. These prohibitions shall not be construed as preventing individuals utilizing free expression zones from soliciting voluntary contributions."

"Section 6 County Fair Free Speech Activities"

"During the annual County Fair, free expression activities may be allowed within the paid gate of the Association, if the individual or group wishing to engage in such activity obtains a booth space pursuant to lease or rental agreement subject to the same reasonable terms and conditions as are applied to any other person leasing such space."

"Section 7 - Violations of Guidelines"

"Anyone violating any of the provisions of these guidelines may be ejected from the grounds of the Association and such violations may be cause for termination of any free speech

activity. The Association reserves all legal rights and remedies. "

ATTACHMENT II
QUESTIONS AND ANSWERS

This section answers some of the more commonly asked questions concerning real life problems and how these guidelines are intended to answer those problems.

Q: Do I really have to adopt policy or guidelines governing free speech activities?

A: No. There is no binding requirement that you do so, however failure to do so certainly makes resolution of any future problems more difficult. Courts are obviously much more comfortable with policies and guidelines that are in written form and capable of being reviewed by members of the public and association employees. There is less of a likelihood that misunderstandings will result if the association's policies are written. It is recommended, therefore, that each Fair Association adopt written policies or guidelines.

Q: Forgive me for saying so, but the language you suggest is very technical and somewhat confusing. Do we have to use the language you suggest, and isn't there an easier way to accomplish your proposals?

A: The language is intended as illustrative only, and may not apply to your situation. It is the meaning and the purpose which is important. Much of this language is lifted directly

from actual policies which have proven to be effective or court cases defining certain terms. Other language is borrowed from judicial decisions discussing the very problems the language is intended to solve. There is simply no question that the proposals are complicated but so are the problems. It is difficult to propose language to cover the many conditions at all of the fairgrounds throughout California. That is why throughout this memorandum, it is recommended that any proposed language be reviewed with one's own attorney and with association board members since they are in the best position to determine what will or will not work on your fairgrounds.

Q: Do I have to provide free expression zones on my fairgrounds? I see no reason to invite trouble, and I anticipate nothing but trouble if we open the door for these activities.

A: There is no ironclad requirement that free expression zones be provided to members of the public for each fairground. Obviously, the answer depends heavily upon the nature of the events that are sponsored at that fairground and even the nature of the fairgrounds themselves. But, it is recommended that unless there are compelling reasons otherwise, free expression zones near the parking areas should be provided. This defuses in large part any controversy about a total failure to provide such zones. Although there will be instances when you will receive complaints from members of the public who do not wish to be exposed to such messages, we must remember that as governmental agents, we do bear a responsibility to protect constitutional

rights, even where those rights are not necessarily popular.

Q: Assuming that I establish these free expression zones in the parking lot, how can I handle the situation where a rodeo or circus attracts a number of protestors on animal rights, or some similar controversial issue?

A: The short answer is that you really cannot regulate the content of the speech, nor should you seek to do so. The very reason behind some of the restrictions on what can and cannot be done in free expression zones is to minimize the disruptive impact of that message, but allow the message to be communicated. Nothing in these regulations force your patrons to listen to the message, or to be subjected to harassment or insult. On the other hand, the rights of the individuals bearing the message must be respected. Facilities using similar guidelines have not experienced a substantial or significant drop in attendance as a result of free speech activities. While there have been sporadic complaints from the public about these demonstrations, people tend to be used to such demonstrations.

Q: What if the sponsor of an important event complains about providing of space for these free expression zones or threatens to withhold business if certain organizations appear?

A: You should explain to the promoter the factors which limit your authority to prohibit or unfairly limit free speech activities. These were discussed in the memorandum. Mere leasing of a facility to a private party does not relieve a Fair of its obligations to provide reasonable access for free speech

activities. You can prohibit or limit activities behind a paid gate or where space is limited or simply not available.

Q: We operate on a tight budget, and the idea of providing free space, thus removing valuable parking spaces and having to assign our fairground employees to provide security and litter control is abhorrent. Isn't there some way we can charge a fee to compensate the Association for the lost space and use of its personnel?

A: There is no simple yes or no answer. First of all, litter control and security are provided by almost all fair associations as a regular part of the services offered. It would be difficult to justify a fee for the use of free expression zones based on these two areas, unless you could demonstrate conclusively that the use of the zones markedly increased the need for security or litter control. Thus we are back to a case-by-case reasonableness test. Generally I recommend against burdening a free expression policy with such requirements. Even a relatively modest fee would probably not offset the true cost of your services, but could be viewed as a condition which discriminates against the indigent or requires payment of a fee for exercise of First Amendment rights.

Q: Must we allow access to anyone who requests use of a free expression zone? What are the criteria for saying no?

A: Once a reasonable space for your zones is established, there are only so many individuals who can occupy those zones, and pure necessity will dictate how many individuals or groups

can utilize the zones (but don't intentionally create small zones!). A second ground, however, may be basic incompatibility between the particular groups. For example, an environmental organization next to a group advocating increased off-shore oil drilling may create friction. You therefore can segregate such groups to different zones if reasonably there is a chance for violence. But try to insure equal accessibility to patrons from these zones so as to not create the problem of "favoritism."

Q: I thought you said content of speech could not be regulated, but that last example looks like you are regulating the message and not the manner of speech.

A: The line can become blurred at times, but the courts really look at whether the activity regardless of content of speech is consistent with the normal activity of the fairground. To use a better example, the United States Supreme Court in noting a New Jersey state auditorium's promotion of sporting events and entertainment events held that such events were not consistent with the opening of the center to First Amendment expression. The court noted that entertainment and sporting events by their nature are provided the public for a specific and single purpose, and do not convert that facility to a forum for public debate on the issues of the day. In the last example, leasing a facility to a particular group for a particular and narrow purpose might well be inconsistent with also providing that same facility to a free debate on that purpose -- especially if violence is possible. Controversial messages are not the

criteria. The possibility of violence or the focused nature of a particular event (such a pure entertainment event or a pure sports event) however might tip the balance against providing free expression zones.

Q: I am confused. It appears at times that you say free expression zones must be provided and other times you seem to imply that they don't have to be provided. What is the answer?

A: The answer is that there is no set rule. The advice remains that to the maximum extent possible, provide free expression zones in the parking areas outside of your paid gate as a minimum. You probably would not have to do this for every event at all times. However, absent a case-by-case review in a particular factual context, it is impossible to prejudge all the many possibilities in a paper such as this. Unless the providing of free expression zones would absolutely cripple your operation or materially interfere with the events that occur there, there is simply no reason not to provide these zones.

Q: I do not have the personnel sufficient to monitor all of the free expression zones which could be created. What are my responsibilities to ensure compliance with these guidelines.

A: Unfortunately, there is no quick fix to this kind of a problem. You may wish to consider a roving patrol from your security office to spot check these zones and make sure all the guidelines are being followed. It is also suggested that copies of the restrictions be printed and provided anyone who "registers" (if you elect to have registration) or at the very

least passed out to those who appear and use the zones. Everybody should know the rules, and thus there will be no excuse for anyone who does not follow those rules.

Q: How do I handle public complaints about persons who are operating within the guidelines, but nevertheless annoying members of the public?

A: Diplomacy. Explain to any member of the public who complains about these free expression zones that the persons using them are exercising an important constitutionally protected right. The patron has every right to disagree with the views expressed, and is under no obligation to take any materials, donate any monies nor listen to any message. Above all, should you have any complaints from members of the public about violations of these guidelines or conduct which appears inappropriate, try to get a name and address of the complaining person and if at all possible, encourage them to send a letter or give a written record of their complaint. Even if no action is taken this time, such letters of complaint may be important in future problems with that same individual or group exercising free speech.

Q: I have had attorneys call on occasion and threaten to sue the Association if we do not allow unlimited access to our fairgrounds or free booth space within our fairgrounds or the displaying of a sign in the auditorium during a particular event. How I do I handle these kinds of calls?

A: First, advise the attorney they should contact your

attorney and discuss this question with him or her. Secondly, advise the attorney that there is a guideline which has been adopted by the association governing this very issue. Offer to send a copy of that guideline if he or she would find it helpful. Remember, anyone can sue your association for any reason. Whether or not they win is another matter.

Q: I am very concerned about violence. You say that under the Unruh Civil Rights Act, I must allow people into my fairgrounds even though I know there is going to be fights or other trouble. Is that absolutely required?

A: No. It is not absolutely required that you allow people into your fairgrounds where you are reasonably certain that violence will result. But you must have a reason to exclude individuals, and certainly it can't be based purely on race, religion or creed. We would all agree that a policy excluding all blacks or all Chinese would be indefensible and irrational. On the other hand, an unfounded fear cannot be sufficient grounds to eject anyone or to prevent anyone from entering. You will find that the courts have been quite reasonable in trying to wrestle with these problems. While most cases involve after the fact situations (such as ejection after a fight), the courts have certainly hinted strongly that government can narrowly restrict access to public facilities if there is a reasonable belief violence may occur. Since this must be reviewed on a case-by-case basis, please do review this with the attorneys who represent your association or the other resource people

identified in the conclusionary section of this paper.

Q: Must I allow solicitation of funds?

A: If free expression zones are established, I think it would be wise to allow such solicitation of funds. But the emphasis must be on "voluntary contributions." The guidelines address sales or commerce under the guise of "free speech." A free expression zone is not intended to become a flea market. Solicitation of donations, signing of initiatives, petitions and leafleting are traditional First Amendment activities which should be protected.

Q: My grounds are extremely congested, and I frankly cannot imagine where I could place a free expression zone in the parking area, or I have no parking areas that are owned by the Association, all parking must occur on the county, city or private lots. How am I then to provide free expression zones?

A: You may have to provide such zones behind a closed and paid gate, but you certainly can require that anyone using these zones pay an entrance fee. You should consider not charging rent for such free expression zones. In the alternative, you might be able to rent booth space to such individuals and not provide free expression zones on a "free" basis. It really depends upon the nature of your fairgrounds and the spacial restrictions which may influence a reviewing court to conclude that the restrictions you place on free speech activities are reasonable and related to the restrictions you yourself face with your physical plant.

Q: If a fight develops between a member of the public and

someone using the free expression zone, or some accident takes place, what is the liability of the Association.

A: As was mentioned earlier, most associations are run by non-profit corporations, counties or state district agricultural associations. Limited immunities apply to many of these associations. By providing space, you do not necessarily indemnify the world against the negligence or volitional acts of those people who use that space. After all, members of the public come onto your grounds all the time and let's face it, suits have been filed in the past against your association by members of the public who were injured in some way. Thus, although no specific advice can be given absent a particular set of facts, certainly individuals attending an event and individuals using a free expression zone stand in no particular different circumstances as to liability. It would be the same as if two of your patrons got into a fight and then sued the Association. By the way, that is one reason it is suggested the use of some disclaimer sign so that there is no allegation that you have somehow encouraged a particular message or group to use the free expression zones.

Q: What if we try your approach and it just doesn't work -- there are too many complaints, there are too many problems or there are too many violations.

A: Well let's not assume the worst. The important thing is that changes can be made in your guidelines at any time. But these changes would be then based upon an actual factual history

and not upon speculation. These guidelines are intended to be flexible and may have to be changed to meet changing conditions.

ATTACHMENT III
CASES OF INTEREST

In this section, relevant legal discussions are listed under generalized headings. This is not exhaustive list of all cases on point.

AUTHORITIES

(Note "*" cases are of particular interest.)

1. Free Speech Activities - O.K. unless incompatible with activity of a particular place at a particular time.
(California Rules - Federal Rule).

Prisoners Union, et al. v. Dept. of Corrections
(1982) 135 Cal.App.3d 930

* Heffron v. Iskcon (1981) 452 U.S. 640 (May require rental of booths at county fair)

SAIA v. N. Y. (1948) 334 U.S. 558, 562.

Grayned v. City of Rockford (1972) 408 U.S. 104

Carrera v. City of Anaheim (1985 9th Cir.) 768 F.2d 1039

Cf. Newspaper Publishers Ass'n v. City of Burbank
(1975) 51 Cal.3d 50

(Gov't cannot restrict free speech in appropriate areas on grounds that other alternatives are available)

People v. Fogelson (1978) 21 Cal.3d 158
(Commercial speech not traditionally protected but is incidentally protected. - See Jacoby v. State Bar (1977) 19 Cal.3d 359. (balancing required))

Ford Dealer's Ass'n v. DMV (1982) 32 Cal.3d 347
(Advertisement regulation can be broader than speech regulation)

2. Public or Quasi-Public Forum?

Brown v. Louisiana (1966) 383 U.S. 131
(Inside library if disruptive - No)

Callison v. U.S. (1969 9th Cir.) 413 F.2d 133
Vacated on other grounds 399 U.S. 526; on remand on other grounds
433 F.2d 1024. (Inside of induction center - No)

Simpson v. Municipal Court (1971) 14 Cal.App.3d 591
(Inside of state capitol - No)

* Prisoner's Union, et al. v. Dept. of Corrections, supra
(Prisons off-limits; parking lot - o.k.)

Fernandez v. Limmer (1981 5th Cir.) 663 F.2d 619
(Airport - o.k.)

Greer v. Spock (1976) 424 U.S. 828
(Military base - No)

Adderly v. Florida (1966) 385 U.S. 39
(Jail - No)

* Heffron v. Iskcon, supra
(County Fair - partial public forum)

Grayned v. City of Rockford, supra
(schools - O.K. outside; No inside)

U.S. v. Albertini (1982 9th Cir.) 710 F.2d 1410
(Ltd. public forum created by military open house)

Ct. S.A.C. v. USAF (1982 8th Cir.) 675 F.2d 1010
cert den. 1033 S.Ct. 579
(No to military base)

* U.C. Nuclear Weapons Lab, et al. v. Lawrence Livermore Lab
(1984) 154 Cal.App.3d 1157
(Nuclear weapons labs - No., but ltd. public forum for visitors
center)

U.S. Postal Service v. Council of Greenburgh Civic Assn's, et al.
(1981) 453 U.S. 114
(Mailboxes - No)

Dallas Assn. of Comm. Org. for Reform NOW v. Dallas City Hosp.
Dist.
(1980 5th Cir.) 670 F.2d 629
(Hospital, inside - No; Outside - yes)

* Cornelius v. NAACP Legal Defense & Ed. Fund (1985) 473 U.S. 788
(Test is whether government intended to open nontraditional forum
for public debate)

- * Prisoner's Union v. Dept. of Corrections, supra
- * HCHH Associates v. Citizens for Representative Gov't
(1987) supra

Alternatives for Cal. Women, Inc. v. County of Contra Costa
(1983) 145 Cal.App.3d 436 and
Dillon v. Municipal Ct. (1971) 4 Cal.3d 860
(Regulations must be narrowly drawn)

Procunier v. Martinez (1974) 416 U.S. 396

Sellers v. Regents of U.C. (1970 9th Cir.) 423 F.2d 493.
cert. den. 401 U.S. 981.
(TPM regs are proper if reasonably related to valid public
interest)

Conrad v. Dunn (1979) 92 Cal.App.3d 236

Kash v. Enterprises, Inc. v. City of L.A.
(1977) 19 Cal.3d 294

4. Regulations should be content neutral and narrowly drawn.

Brandenburg v. Ohio (1969) 395 U.S. 444

U.S. Postal Service v. Council of Greenburgh Civic Assn's, et
al., supra

Cons. Edison Co. v. Public Service Comm'n (1980) 447 U.S. 530

Linmark Assoc., Inc. v. Wilingboro (1977) 431 U.S. 85

* Bailey v. Loggins (1982) 32 Cal.3d 907

* Chino Feminist Health Center v. Scully
(1989) 208 Cal.App.3d 230

Perry Ed. Assn. v. Perry Local Educator's Ass'n.
(1983) 460 U.S. 437

Portland Fam. Women's H. Ctr. v. Advocates for Life
(9th Cir. 1986) 859 F.2d 681.

5. Permits for Free Speech Activity

Rosen v. Port of Oakland (1981 9th Cir.) 641 F.2d 1243
(No advance notice and registration allowed. See also, Thomas v.
Collins (1944) 323 U.S. 516.)

Cf. *Wolin v. Port of New York Authority (1968 2nd Cir.) 392 F.2d 83

(O.k. to require some conditions for activity)

Cox v. Louisiana (1965) 379 U.S. 536

(O.K. to require parade permit)

Staub v. City of Baxley (1958) 335 U.S. 313

(Generally no permits)

Condemned Harper v. Va. State Bd. of Ed. (1966) 388 U.S. 663;

Jones v. City of Opelika (1943) 319 U.S. 103

(No fees charged for permits)

* Heffron v. ISKCON, supra

(O.K. to require rental of booth at county fair)

In re Porterfield (1946) 28 Cal.2d 91

(Licenses bad if overbroad)

6. Loudspeakers

Kovacs v. Cooper (1949) 336 U.S. 77

(Restriction of sound trucks - o.k.)

SAIA v. New York, supra

7. Picketing

* Cox v. Louisiana, supra. (Picketing and marching not as broadly protested as other forms of free speech)

Shultz v. Frisby (1986 7th Cir.) 807 F.2d 1339

(O.K. to restrict residential picketing. Note recent U.S. Supreme Court case also says same).

Organization for a Better Austin v. Keefe (1971) 402 U.S. 415

Cal. Retail Liquor Dealer's Assn. v. UFW of America

(1976) 57 Cal.App.3d 606

(Generally picketing is o.k.; Ditto In re Berry (1968) 68 Cal.2d 137.)

8. Solicitation (funds)

* International Society for Krishna Cons., etc., supra

(Solicitation of funds not as protected as other free speech; can be prohibited in non-public forum and/or where inconsistent with normal function of facility)

Carreras v. City of Anaheim, supra
(Broad ban no good)

9. Disclosure of Names of First Amendment Participants.

Talley v. California (1960) 362 U.S. 60
(Generally cannot require disclosure)
cf. Buckley v. Valso (1975) 424 U.S. 1
(O.k. to disclose contributor's names under Federal election laws)

Wilson v. Stocker (1987 10th Cir.)
819 F.2d 943
(State cannot prohibit anonymous literature)

10. "Rights of Listeners not to Listen; Captive Audience

Kovacs v. Cooper (supra) 336 U.S. 77
(Free speech does not mean one has to listen or take pamphlet)

Lehman v. Shaker Hts. supra (captive audience on a moving bus)

Callison v. U.S., supra (captive audience inside building)

11. State action - Private action

Burton v. Wilmington Parking Authority
(1961) 365 U.S. 715
(State lease of public bldg. to private person cannot defeat 1st Amendment rights)

Cf. Hudgens v. NLRB (1976) 424 U.S. 507 (no if private hall)

Robins v. Prunevayd Shopping Center, supra
(Note: This is the only case explaining how California's free speech rules differ from the U.S. rules. Read both it and U.S. Supreme Court's affirmation.) See also: Liam v. Board of Police Commr's (1987) 190 Cal.App.3rd 1036)

Bailey v. Loggins, supra (Cannot condition lease on renunciation of cons't rights.)

12. Balancing of Intent

Prisoner's Union v. Dept. of Corrections, supra

Concerned Jewish Youth v. McGuire (1980 2nd Cir.) 620 F.2d 471

13. "Fighting Words"

Brandenburg v. Ohio (1969) 395 U.S. 444

Terminiello v. Chicago (1949) 337 U.S. 1

* Cohen v. California (1971) 403 U.S. 15

Chaplinsky v. New Hampshire (1941) 315 U.S. 568

In re Cox (1970) 3 Cal.3d 205

cf. Ketchens v. Reiner (1987) 194 Cal.App.3d 470

cf. Jefferson v. Superior Ct. (1975) 51 Cal.App.3d 721

14. Signs

HCHH, etc., supra (O.K.'s limits on signs inside shopping mall)

City Council v. Taxpayers for Vincent (1984) 466 U.S. 789
(ordinance banning posting of signs on public property. O.K.)

Sussli v. City of San Mateo (1981) 120 Cal.App.3d 1; cert. den.
454 U.S. 1085 (Ditto)

People v. Garcia (1939) 37 Cal.App.2d Supp. 753
(signs are a part of free speech)

15. Conditions on T.P.M.

In re Hoffman, supra. (Can restrict activities where congestion
threatened)

Dallas Ass'n of Comm. Org, etc. (O.K. for congestion)

HCHH, etc., supra (Laundry list of conditions reviewed.)

U.S. v. Wall (1987 - D.C.App.) 521 A.2d 1140
(O.K. to condition activities to maintain decorum and order in
Supreme Court bldg.)

Morton Plaza Associates v. Playing for Real Theater (1986) 184
Cal.App.3d 10
(O.K. to forbid activity in shopping center due to congestion)

cf. Newspaper Publishers Ass'n v. City of Burbank, supra
(Gov't cannot restrict all free speech activities just because other areas available)

Hurwitt v. City of Oakland (1965) 247 F.Supp. 995
(Can limit numbers of people at sites but beware! Slippery test!
See e.g. Edwards v. So. Carolina (1963) 372 U.S. 229. Any restriction must be based on congestion and providing safer access to free expression zones.)

* In re Bushman (1970) 1 Cal.3d 762 and * People v. Lim (1941) 18 Cal.2d 872

*Unruly patrons or persons can be restricted or ejected)

* Cal Retail Liquors Ass'n, etc., supra
(O.K. to limit picketing at entrances)

16. Unruh Civil rights Act (Civil Code § 51) - Exclusion of Patrons

* Sunset Amusement Co. v. Bd. of Police Commr's
(1972) 7 Cal.3d 64

(Constitutional right of association. Does not include people congregated for sport or amusement but does where people are congregated for advancement of beliefs and ideas.)

Orlof v. Turf Club (1951) 36 Cal.2d 734
(Cannot exclude persons on suspicion alone)

Flores v. Turf Club (1961) 55 Cal.2d 736
(Law can allow exclusion of certain classes of person; e.g., gamblers, for valid public purpose)