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City Attorney

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TO: Fresno Police Department

RE: Current State of Law Regarding Free Speech Restrictions on Public Property

The following memorandum will update the department on the current state of the law regarding Free Speech restrictions on public property. On December 1, 2003 the Ninth Circuit Court of Appeal in *Kuba v. 1-A Agric. Association* held that a policy enforced by an association at a facility during the rodeo and circus was unconstitutional.

The **Rule** in *Kuba* is that merely invoking interests in regulating traffic around an exhibit or performance facility is insufficient. The government must also show that the proposed communicative activity endangers the asserted interests.

Notwithstanding the holding in *Kuba*, permissible restrictions on expression in public forums can be implemented, subject to the following:

(1) Any restrictions on expression in public forums must be content-neutral; (2) the restrictions must be narrowly tailored to serve an important government interest, and leave open ample alternative channels for the communication of the message.

(2) The Courts have consistently given primacy of protection to speech on public sidewalks. Under *In re Lane* (1969) 71 Cal. 2d 872, pursuant to the First Amendment, a person has the right "unquestionably under the free speech guaranties to distribute handbills on a public sidewalk especially in front of a public forum, but also on the privately owned sidewalk in front of a business." See also *Robins v. Pruneyard Shopping Center* (1979) 23 Cal. 3d 899, and *N.L.R.B. v. Calkins* (9th Cir. 1999) 187 F. 3d 1080.

(3) However, First Amendment activities can be prohibited in (1) areas normally subject to congestion, such as ticket windows and turnstiles and (2) persons can be excluded entirely from areas where their presence would threaten personal danger or block the flow of passenger or carrier traffic, such as doorways and loading areas.

(4) **Please note that designating a free expression zone at a public facility has been found to be unconstitutional.**

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Chief of Police Jerry Dyer, Fresno Police Department
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