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**Via Facsimile and U.S. Mail**

November 28, 2006

Raymond W. Kelly  
Commissioner  
New York City Police Department  
1 Police Plaza  
New York, NY 10038

Re: Revision of Chapter 19 of Title 38 of the  
Official Compilation of Rules of the City of New York

Dear Commissioner Kelly:

I write concerning the Police Department's (NYPD) proposed revision to Chapter 19 of Title 38 of the Official Compilation of Rules of the City of New York. Thank you for the opportunity to submit this letter in lieu of testimony.

In the first of two recent court cases, the NYPD arrested bicycle riders for disorderly conduct based on a law that did not clearly define "parade" or "procession." In the second, the City's efforts to control a gathering of Critical Mass bicyclists were denied because of the very same statutory vagueness. While the Police Department has endeavored to make the rules more precise, the proposed amendments are still vague, overbroad and not narrowly enough tailored to achieve their objectives.

The second half of Section 19-02 of Title 38 defines a parade as "any procession or race which consists of a recognizable group of 30 or more vehicles, bicycles or other devices moved by human power, or ridden or herded animals proceeding together upon any public street or roadway." First, I am concerned by the arbitrary nature of the number 30. To

require such a small group of bicyclists, motorcyclists, or others to seek a permit before using the streets – while following all applicable traffic rules – is far too restrictive. Regulating groups in these small numbers will inevitably create confusion and will unreasonably restrict the public’s right to assemble. Indeed, there appears to be no specific rationale for the number 30 as opposed to any other number, particularly considering the fact that the number was 20 in the last iteration of Police Department’s proposed rules (and that the Critical Mass rides tend to include considerably greater numbers of riders).

Second, I consider this proposed regulation to be overbroad. It is widely understood that this rule is being proposed to address Critical Mass bicycle rides, and yet this rule would affect many other recognizable groups that the Police Department simply has no business, and presumably no interest, in regulating. For example, this rule could affect funerals, weddings, small group bicycle rides, and other legal activities. Never before have these groups needed police permission to use the streets.

Third, the proposed regulation is too vague to be enforced because it is only applicable against a “recognizable group.” Whether one bicyclist, or motorcyclist, is part of a recognizable group remains a subjective determination by the Police Department.

I have similar concerns about the first part of subdivision (a) of proposed Section 19-02, which requires a parade permit for groups of 10 or more people who are walking or traveling using other means, and do not follow traffic rules for more than two blocks. Under the proposed rules, a family of eleven people that walks two blocks and jaywalks would be subject to an arrest if they do not have a parade permit.

There is an old adage that “hard cases make bad law.” In the Police Department’s effort to crack down on certain bike rides – which admittedly presents challenging legal questions – we must caution against creating rules that have the broader effect of infringing on the civil rights of all New Yorkers. I trust that your final rules will protect the peace without unduly infringing on the right to peaceful assembly.

Thank you for your consideration of my views.

Sincerely yours,



Daniel R. Garodnick