

PUBLIC DEFENDER ASSOCIATION

RACIAL DISPARITY PROJECT · DEATH PENALTY ASSISTANCE CENTER

Contact: Lisa Daugaard/Policy Director/ (206) 852-6046 or Patricia Sully/Racial Disparity Project Staff Attorney/(206) 963-5529

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Response to Downtown Business and Neighborhoods' Letter On Non-Permitted Protests

We respect, and often collaborate with, the organizations that authored yesterday's letter calling for the City to shut down marches without permits in downtown Seattle. In this instance, however, they are heading in an unhelpful direction.

Since November 24th, people nationwide have taken to the streets, often without permits, to voice their concerns about racial disparity in policing, police tactics, and criminal justice system reform, among other issues. Seattle is no exception, nor should it be.

The downtown business and neighborhoods' letter objects to marches without permits. But the law is clear that permit requirements are a prior restraint on speech and assembly. Seattle's street use permit scheme would be unconstitutional if applied to protest marches—it provides far more discretion to local officials to deny or circumscribe marches than the First Amendment allows. We appreciate that City officials appear to recognize this, and do not apply the street use permit process to speech activities. They are correct and that practice should continue.

More fundamentally, it is appropriate and inevitable that normal life, including holiday shopping and celebrations, be interrupted from time to time when matters of urgent concern to some members of the public arise. As the Supreme Court eloquently wrote 75 years ago in *Hague v. CIO*, "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions."

We searched yesterday's letter in vain for any acknowledgement that the tens of thousands who have taken to the streets of American cities in the past few weeks are responding to a very real crisis regarding racial inequality in law enforcement practices. Black Lives Matter, and many now feel that that issue must intrude into "business as usual" to ensure that a critical mass of Americans understands that change in policing practices is urgently needed.

It seems highly unlikely that Seattle's reputation is taking a beating nationally because unpermitted protests have interrupted the holiday season. This has been the case in almost every major American city. Police accountability protests even disrupted New York's famous tree lighting ceremony at Rockefeller Center last week, and yet New York is and will remain a tourist destination. This moment of necessary outcry will surely, perhaps regrettably, subside, and Christmas will not be cancelled. What will linger is the legacy of Seattle's police response, and the way the protests and protesters are being discussed here. If those responses continue to exacerbate the tensions between young people of color and the Seattle Police Department, that is long-term damage we truly cannot afford.