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August 5, 2009

**VIA EMAIL AND U.S. MAIL**

Mayor Rick Baker  
City Council Chair Jeff Danner  
St. Petersburg City Hall  
175 5th St. N.  
St Petersburg, Florida 33701

Re: BayWalk Revitalization Plan

Dear Mayor Baker and City Council Chair Danner:

We write concerning a portion of the City of St. Petersburg's BayWalk Revitalization Plan that is being considered as a way to reinvigorate the struggling BayWalk complex. We are specifically concerned about the plan to donate a public sidewalk to the private owners of the complex. One of the reasons the City has given for the plan is it would allow the owners of the complex to exclude people from engaging in First Amendment activities such as assembly and speech. As the largest civil liberties organization in the State of Florida, we oppose the proposed plan for both practical and legal reasons.

The most obvious criticism of the proposal is that a cash-strapped city should not be giving away valuable real estate to a private business. In addition, trying to squelch constitutionally protected forms of political expression runs contrary to the values of a democratic society. Although we are not aware of any violent or threatening behavior by political protestors at BayWalk, there are a variety of laws in place to address such conduct if it were to occur. Moreover, allowing a private business to exclude passers-by at its discretion belies the City's oft-stated goal of making downtown pedestrian friendly.

Perhaps most importantly, donating the sidewalk to the owner of BayWalk would not enable it to stop people from engaging in constitutionally protected expression there. Numerous federal and state cases hold that local government efforts to privatize public sidewalks do not change their character from traditional public forums to private property whose owners can exclude people engaging in First Amendment activity. Below is a sample of those legal authorities.

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In *United Church Of Christ v. Gateway Economic Development Corp.*, 383 F.3d 449 (6<sup>th</sup> Cir. 2004), the court held that the private owner of the sidewalk surrounding a sports arena could not stop protesters from using the sidewalk to demonstrate, notwithstanding that it was privately owned. Similarly, in *Venetian Casino Resort, L.L.C. v. Local Joint Executive Board*, 257 F.3d 937 (9<sup>th</sup> Cir. 2001), the court deemed the newly constructed and privately owned sidewalk surrounding the Venetian casino in Las Vegas a public forum that union members could use to protest against the management of the casino. Yet another United States Court of Appeals reached the same conclusion in *First Unitarian Church of Salt Lake City v. Salt Lake City Corp.*, 308 F.3d 1114 (10<sup>th</sup> Cir. 2002), in which the city sold a part of a downtown street to a church, which in turn sought to restrict First Amendment activities on what had become a privately owned sidewalk. The court struck those restrictions.

Finally, a Florida case that went up on appeal in a different posture is worth noting. In *Wood v. State*, 2003 WL 1955433 (Fla. Cir. Ct. 2003), an individual collecting signatures to get his name on the ballot without paying a qualifying fee refused to leave a privately owned, enclosed mall. He was arrested for trespass and convicted in County Court. The Circuit Court, sitting in its appellate capacity, held that Article I, Section 5 of the Florida Constitution, which protects the "right to petition as a form of democratic expression at its purest," prohibits a private owner of a quasi-public place from using state trespass laws to exclude peaceful political activity. *Id.* at \*2. The First District Court of Appeals affirmed the Circuit Court's decision.

For all of the above reasons, we believe the City's proposed transfer of the sidewalk abutting BayWalk to the owners of that complex would be against the interests of the citizens of the City of St. Petersburg and, in any event, would not accomplish the stated goal of excluding people who would use the sidewalk for expressive purposes. It is my understanding that community groups that use the sidewalk for such purposes are interested in challenging any attempt to exclude them, which could lead to a lengthy legal proceeding that would not be in the interests of the owners of BayWalk or the City.

If you have any questions concerning the matters raised in this letter, I would be glad to discuss them with you.

Sincerely,



Glenn M. Katon

cc: All Members of St. Petersburg City Council  
Mark A. Winn, Esq., City Attorney