

**DENVER DEPARTMENT OF PARKS AND RECREATION
CITY AND COUNTY OF DENVER
200 W. COLFAX AVENUE
DENVER, COLORADO 80204**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

**IN THE MATTER OF THE DENVER 420 RALLY
ADMINISTRATIVE CASE NO. DPR 2017-101**

Pursuant to Denver Parks and Recreation Public Event Policy (Policy), Article I of Chapter 39, Denver Revised Municipal Code (D.R.M.C.) § 39-1, Denver Parks and Recreation Administrative Citation Rules and Regulations (Park Use R&R's) § IV §§ A-F and the request of the parties, this matter came to formal review following a Petition for Review of Case No. DPR 2017-101 filed by the Petitioner, Miguel Lopez, The Denver 420 Rally (420 Rally), by his legal counsel Robert Corry of Corry & Associates. Mr. Corry appears for and on behalf of the Petitioner, Mr. Lopez. Assistant City Attorney, Renee A. Carmody, represents the Denver Department of Parks and Recreation, City and County of Denver (Department or DPR) and Executive Director Allegra 'Happy' Haynes (Director).

NATURE OF PROCEEDINGS

This proceeding to review the Notice of Violation (NOV) arises under Policy Part I § 1.4, § 8.2.1, and § 8.4.6, D.R.M.C. § 39-1 et seq. and Park Use R&R's § IV §§ A-F. Both Policy at § 8.2.1 and § 8.4.6 and Park Use R&R's § IV provide an opportunity for an informal hearing at which the Applicant/Permittee entity may respond to the reasons for the Department's NOV and imposition of penalties, and provide arguments as to why the NOV and penalties should not be imposed. Pursuant to Park Use R&R's § V §§ C in this proceeding, the Hearing Officer has the authority to make a review of the matter. The Administrative Hearing Officer's (AHO) decision will be made based solely on the Appeal hearing held on September 19-20, 2017, review of the administrative record, and all admitted Exhibits filed with the AHO for the Appeal.

In a proceeding, to review the NOV and impose the penalties noted in the NOV entered by Ms. Haynes, Executive Director of Denver Department of Parks and Recreation, the Department need only show by a preponderance of the evidence that the Department has established the Responsible Party is guilty of the alleged violations and that the administrative citation was lawfully issued - Park Use R&R's at § V §§ G. The Department's issuance of the NOV and penalties will be affirmed unless the AHO determines, that the decision is unsupported by the evidentiary hearing, evidence in the Record and Exhibits, or is inconsistent with the substantive or procedural provisions of the Policy, D.R.M.C., or the Park Use R&R's. Lastly, the AHO, in deciding the Appellant's case, is not to consider a challenge to enforceability, legality, or

constitutionality of the Park Use R&R's, Article I of Chapter 39 D.R.M.C. or Article XII of Chapter 2 D.R.M.C.

SUMMARY OF EVIDENCE AND FINDINGS

On May 19, 2017, the DPR notified the Appellant, Miguel Lopez and The Denver 420 Rally, of its intent to file a Notice of Violations and penalties the DPR is imposing as a result of the NOV against Miguel Lopez and the Denver 420 Rally as Permittee. (PEP §2.36 *Permittee* means an individual or a non-profit or for-profit entity who or which makes Application to, and obtains, an Event Permit from the Permitting Office, for the holding of an Event.) Specifically, the Department noted in the NOV, multiple violations of the Code under the Policy, the Park Use R&R's, and D.R.M.C. § 39-1 et seq. Included in the NOV the following violations and Sections were noted:

- “Failed or refused to substantially comply with an approved security plan,
- Failed or refused to substantially comply with any applicable Requirements set forth in Part VI or Part VII , by violating Section 6.1.3.1.1 of the Policy concerning trash,
- Failed or refused to substantially comply with any applicable Requirements set forth in Part VI or Part VII , by violating Section 6.4.6 f the Policy concerning trash,
- Eight counts of failed or refused to substantially comply with Part VI and V II Public Event Policy, by violating Section 6.16 concerning unlicensed food vendors,
- Three counts of failed or refused to substantially comply with Part VI or Part VII of the Public Event Policy, by violating Section 6.16. of the Policy concerning Public Works street occupancy permit violations.” (Pg. 8 NOV)

Also listed in the NOV was the list of penalties to be imposed under the Policy found at Section 8.4.4 as follows:

- “For the first violation within three consecutive years: A written warning
- For the second violation within three consecutive years: A fine of one hundred dollars (\$100) plus ten percent (10%) of the Fee applicable to the Event under the Fee Ordinance
- For the third violation within three consecutive years: A fine of one hundred dollars (\$100) plus twenty percent (20%) of the Fee applicable to the Event under the Fee Ordinance
- For the fourth violation within three consecutive years: A fine of one hundred dollars (\$100) plus thirty percent (20%) of the Fee applicable to the Event under the Fee Ordinance. In addition, if the Event is a Priority Event or in the process of qualifying to be a Priority Event, all claims to such status shall be deemed lost
- For the fifth violation within three consecutive years: The Permittee shall be barred from being granted any Event permit for three (3) years. In addition, if the Event is a Priority Event or in the process of qualifying to be a Priority Event, all claims to such status shall be deemed lost.” (Pg. 9 NOV)

In conclusion, Ms. Haynes noted that the penalties are cumulative and because multiple violations were found at this Event she imposed the following penalties:

- “First Violation: consider this letter your written warning

- Second violation: \$100 plus 10% of \$ 7975.00 permit fee = \$897.50
- Third violation: \$100 plus 20% of \$ 7975.00 permit fee = \$1695.00
- Fourth violation: \$100 plus 30% of \$ 7975.00 permit fee = \$2492.50 and loss of Priority Status
- Fifth violation: Barred from being granted any event permit for three (3) and loss of Priority Event Status.” (Pg. 9 NOV)

Ms. Haynes indicated that, “The total penalty amount for violations by Permittee is \$5,085.00, plus loss of your Priority Event status, and you (both individually and as your company) will not be ineligible [sic] to obtain any event permit for three years.” (Pg. 9 NOV)

The NOV dated May 19, 2017 also listed the violations and penalties for Permittee Workers. (PEP § 2.37 *Permittee Worker* means any employee, worker, volunteer, contractor, subcontractor, service provider, supplier, vendor, exhibitor, performer, entertainer, athlete or similar person authorized or retained by the Permittee with respect to the operation and function of an Event.) Ms. Haynes indicated that, “In additions to the violations I find against you as Permittee, I also find fifteen violations by Permittee Workers (8 unlicensed food vendors, and 7 imminent health violations), as noted above regarding food vendor violations.” She noted the penalties provided in Section 8.4.5 are as follows:

- “For the first violation within three consecutive years: A written warning
- For the second violation within three consecutive years: A fine of one hundred dollars (\$100) plus five percent (5%) of the Fee applicable to the Event under the Fee Ordinance
- For the third violation within three consecutive years: A fine of one hundred dollars (\$100) plus ten percent (10%) of the Fee applicable to the Event under the Fee Ordinance
- For the fourth violation within three consecutive years: A fine of one hundred dollars (\$100) plus fifteen percent (15%) of the Fee applicable to the Event under the Fee Ordinance. In addition, if the Event is a Priority Event or in the process of qualifying to be a Priority Event, all claims to such status shall be deemed lost
- For the fifth violation within three consecutive years: A fine of one hundred dollars (\$100) plus twenty percent (20%) of the fee applicable to the Event under the Ordinance.
- For the sixth violation within three consecutive years: A fine of one hundred dollars (\$100) plus twenty percent (30%) of the fee applicable to the Event under the Ordinance.” (Pgs. 9-10 NOV)

In conclusion, Ms. Haynes noted that the penalties are cumulative and because fifteen (15) violations were found at this Event she imposed the following penalties:

- “First Violation: consider this letter your written warning
- Second violation: \$100 plus 5% of \$ 7975.00 permit fee = \$498.75
- Third violation: \$100 plus 10% of \$ 7975.00 permit fee = \$897.50
- Fourth violation: \$100 plus 15 % of \$ 7975.00 permit fee = \$1296.25
- Fifth violation: \$100. Plus 20% of \$ 7975.00 permit fee = \$1695
- Sixth violation: \$100 plus 30% of \$7,975.00 permit fee = \$2,492.50
- The total penalty amount for violations by Permittee Workers is \$6,880.” (Pg. 10)

“In summary, I am imposing upon you a total monetary penalty in the amount of \$11,965, banning you from being granted any event permit for three years, and rescinding your Priority Event status. Additionally, I am charging you for \$190 in damages as described in Attachment 9. Parks and Recreation is holding your deposit in the amount of \$2,831.25. I will subtract the penalty assessment and damages from your deposit, which leaves a balance due by you of \$9,323.75.” (Pg. 10 NOV)

The NOV stated that pursuant to Policy § 8.4.6, any citation or penalty assessed under § 8.4 is subject to an administrative Appeal under Park Use R&R’s, as amended and as adopted by the DPR Executive Director. As noted in the Policy, the Appeal of this determination is commenced by filing a written notice of Appeal, along with the required \$25.00 fee noted at Park Use R&R’s § IV §§ D, due fifteen (15) days from the date of this determination.

Following issuance of the NOV on June 2, 2017, Appellant Attorney, Robert Corry, entered his appearance for the Petitioner and requested a hearing, “...Pursuant to the Denver Department of Parks and Recreation, Administrative Citations Rules and Regulations, As Adopted 5-11-12 and As Amended and Restated 11-18-15, Section IV – Filing an Appeal, this is the Permittee’s and Responsible Party’s formal appeal of the May 19, 2017 Notice Letter from you finding violations and issues. (Your letter was received Saturday, May 20, 2017 via electronic mail.)” Mr. Corry noted in his Appeal letter, “The reasons Appellant is not guilty of the alleged violations of the Code or that the administrative citation or penalty is objectionable, incorrect, or not lawful.”

Subsequent to the Petitioner’s request, Ms. Haynes sent an Order dated June 23, 2017, appointing the below captioned AHO. This Order was resent to Mr. Corry and he was given until July 7, 2017 to file any objections, revise or supplement his petition for review.

On or about July 7, 2017, Mr. Corry submitted a Supplemental Appeal to the Department’s NOV and assessment of penalties, which included documents from Miguel Lopez: receipts, invoices, and plans from Santino Walter. Mr. Corry in his letter indicates that seven separate documents were submitted to Ms. Haynes and the AHO. In his Supplemental Appeal, Mr. Corry also indicated that a Colorado Open Records Act (CORA) request was submitted to the City related to the 420 Rally and based on that request the Appeal may be further supplemented.

On or about July 11, 2017, the AHO received documents from the Department regarding the case and was advised of the entry of Ms. Carmody and Mr. Jason Moore for the Department and City and County of Denver. The Record of Appeal was sent on or about July 25, 2017 by way of several documents including DVD discs and on August 9, 2017 HALO videos that contained the Department’s file. Subsequently, Notice on or about July 26, 2017 was sent to all parties following a discussion with counsel for both sides; this case was set for hearing on September 19, 2017. (City File Record of Appeal)

It was Ordered by the AHO that pursuant to Park Use R&R's § V §§ A, the parties were to submit Pre-Hearing Statements outlining the criteria found at that section by September 12, 2017. On or about September 12, 2017, the parties through their respective counsel submitted the ordered Pre-Hearing statements and those statement are included in this record and were considered in the same manner as the testimony and Exhibits. Prior to the hearing on September 15, 2017, Mr. Corry submitted a request for Subpoena, requesting the appearance and testimony of Maurice Lucky, of JCJ Executive Protection, no objection was filed by the City and the subpoena was granted.

At the Appeal hearing, Mr. Corry appearing for Miguel Lopez presented an opening statement on behalf of his client. Ms. Carmody, presented an opening statement on behalf of the Denver Department of Parks and Recreation. Ms. Carmody in her opening statement indicated that the violation allegation concerning noise was withdrawn and not part of the NOV evidence presented for hearing. She did indicate that in total 29 violation were being alleged; however, for purposes of the Public Event Policy provision they would be organized into five (5) overall categories. Mr. Corry stated that the City is bound to the five violations noted in the NOV and 29 violations were never filed in the NOV prior to hearing. It is noted that both parties had submitted Pre-Hearing statements on September 12, 2017, they were read and made part of the Record.

ARGUMENTS

A. The Respondent, DPR, through its brief and documents from the Record notes the following facts and argument:

The Respondent, DPR, through Ms. Carmody, notes in her brief, Exhibits and the Record the following five violations the city is proceeding with and for which penalties are imposed:

1. "Department of Environmental Health (DEH) code violations and lack of required food permits – these violations fall under Section 6.16 of the Policy and Section 10-13 (A-C) Environmental Health's Food Rules and Regulations;
2. Security and Safety – this violation fall under Sections 8.4.4 and 6.16 of the Policy;
3. Failure to follow the trash plan – this violation falls under Section 6.4.6 of the Policy;
4. Failure to clean the park during the Event – this violation fall under Section 6.1.3.11 of the Policy;
5. Public Works permit violations for obstruction of the street, right-of-way, and sidewalks – these violations fall under Sections 6.16, 3.12.1, 3.12.1, 3.12.2.1 of the Policy and Section II and III of Denver Department Public Works Rules and Regulations Pertaining to the Issuance of Permits".

She states that the DPR should prevail in this Appeal because:

1. "Ms. Allegra "Happy" Haynes, as the Executive Director of Parks, did not overstep her authority in finding these violations, and assessing penalties as directed by the Policy.

2. The facts presented in the Notice of Violation, the Record, the Pre-Hearing Statements, and the evidence presented at the Hearing support Ms. Haynes decision.
3. There are no applicable defenses that mitigate Lopez's failure to follow the Policy."

Ms. Carmody argues for the City that from the evidence presented by the Petitioner, Miguel Lopez received the Public Event Policy and was required to follow the Policy. She notes that the Exhibits, testimony of Kris Ryan, and the admissions of Mr. Lopez establish his knowledge and requirements of the Policy. She argues that Mr. Lopez failed to follow or substantially comply with the Policy's requirements concerning Food Safety, Public Safety, Trash, and Right-of-Way; therefore, is in violation of the Policy regarding those provisions. She states that Section 8.1 of the Policy is applicable, "...there is no dispute that Lopez was the Permittee for the Event. As the Permittee, Lopez is ultimately accountable for all violations that occurred in connection with the Event. Part VIII, Section 8.1 Permittee's Responsibilities and Liabilities states:

The Permittee holding any Event Permit shall be responsible and liable for failure to perform in accordance with the Event Permit, this Public Event Policy and Applicable Law. The City reserves the right to *hold the Permittee fully accountable for any violation of the Event Permit, this Policy and Applicable Law.*"

Ms. Carmody continues that, "Section 8.4.4 of the Policy requires Lopez and his employees to substantially comply with: (1) his approved plans; (2) any Special Rules contained within his permit; (3) permits and licenses from other City Agencies; and, (4) all other applicable requirements in the Policy. Mr. Lopez failed to do so. As such, Mr. Lopez, as the Permittee, should be found responsible and liable for *all* the violations assessed, including those committed by Mr. Lopez's employees, contractors, subcontractors, and workers regardless of whether he was personally involved in causing the violation."

1. Department of Health Violations: Policy § 6.16

Ms. Carmody states, "Lopez was assessed eight DEH Health Code Violations, and permittee workers were assessed 15 DEH violations." (Exhibits Tab H). She notes the testimony of Ms. Sally Born, Public Health Investigator II, employed by DEH establishes that Mr. Lopez as Permittee was aware of the DEH and Policy requirements. "The Permittee is required to comply with all rules and regulations, requirements, restrictions, permits, licenses, approvals required or imposed by any other City Agency. Section 6.16 of the Policy." Ms. Borne testified that her department outreaches to Permittees, and on February 9, 2017, she sent Mr. Lopez, "an email with all the requirements for food vendors at the Event, this included a link to Environmental Health's Food Rules and Regulations." Ms. Carmody states that at the hearing, Lopez admitted to receiving the email and reading the Food Rules and Regulations, including the regulation concerning those of the Event coordinator. "Event Coordinator means the individual or entity responsible for permitting, obtaining approvals, and maintaining compliance with the applicable Codes for a Temporary Event" (Environmental Health's Food Rules and Regulations at p. 4). She argues that the evidence established that Mr. Lopez was the

only Permit holder for this Event; therefore, responsible for maintaining compliance with the applicable rules for temporary events. She quotes the DEH Food Rules and Regulations which state:

- A. “Event Coordinators shall verify that regulated Temporary Retail Food Establishments hold a Temporary Retail Food Establishment License that is valid during the event(s) they organize.
- B. Event Coordinators shall verify that regulated Mobile Retail Food Establishments hold a Mobile Retail Food Establishment License that is valid during the event(s) they organize.
- C. Event Coordinator shall not allow unlicensed vendors who sell regulated Food products to participate in the event.”

Ms. Born testified that, “...DEH found eight food vendors not properly licensed - The Ginger Pig, Tacos Y Tortas La Reyna Azteca, and Frozen Matter did not hold the required Denver mobile retail food establishment license; World of Weed CBD, Sacred Body CBD, Saint Raphael of the Hills CBD, Icon Investments, and Box Studios - all were operating without the required Denver temporary retail food establishment license.” (Exhibits Tab H Food Inspection Reports). Similarly, Section 8.4.5 of the Policy, requires Mr. Lopez’s Permittee Workers (i.e. contractors, vendors, subcontractors, workers, etc.) to follow these requirements as well, and they failed to do so.

Ms. Carmody stated that Ms. Born also testified concerning imminent health hazards of food vendors, which are critical violations of DEH’s Food Rules and Regulations. Per the testimony of Ms. Born, she spoke to Mr. Lopez concerning several unlicensed food vendors who were contacted and on the morning of the Event, many of these unlicensed vendors sold food to customers with imminent health hazards (i.e. no hand washing station, commissary, no hot water – Exhibit E). Additionally, she notes that Ms. Born spoke to Mr. Santino Walter, about these issues, who later testified that subsequent to Ms. Born’s discovery, he contacted these vendors and asked them to leave and immediately fired the 420 Event staff person in charge of handling the food vendors.

From the record, Ms. Carmody states, “...23 counts of food violations were filed against Mr. Lopez by Ms. Haynes; including eight counts of DEH Health violations for unlicensed food vendors and fifteen violations against food vendors, for their lack of licensure and having several imminent health hazards.” Ms. Carmody argues that, “...the failure to comply with DEH Rules constitutes the violation under Section 6.16 of the Policy and not whether someone is injured as argued by Mr. Lopez.” She also argues that Mr. Lopez had no way of knowing whether anyone contracted a food illness because he never checked the EMT logs or spoke to all the people who attended the 420 Event. According to Ms. Born, it may take up to 50 days for foodborne illness symptoms to show up. Ms. Carmody concludes by noting, “...actual injury is irrelevant to this analysis, Lopez has no basis to say and cannot establish that no one was injured as a result of the at least 23 food violations.”

2. Safety and Security Violation Policy § 8.4.4 and § 8.4.5

Regarding this violation, Ms. Carmody alleges that Mr. Lopez failed to follow his safety and security plan, and that Sections 8.4.4 and 8.4.5 of the Policy require Mr. Lopez and his Permittee Workers to, “substantially comply with his approved plans.” (Exhibits Tab A). She notes that Mr. Lopez and Mr. Walter hired Mr. Maurice Luck’s company, JCJ, and he testified that they believed JCJ exactly followed the plan. From the evidence, she notes that, “...the security plan required four security entrances opening at 10 am. There was a delay in the fourth gate opening, due to lack of tables and needing a tool to break the gate chains”. Ms. Carmody alleges that this delay was a violation of the Safety and Security Plan which lead to long lines and aggravated patrons at the Event. She notes that, “Mr. Lucky testified that the fourth gate opening was delayed by at least an hour.” However, Denver Police Department’s Commander Phelan testified that, “...his Event log for that day showed that the fourth gate was not opened until after noon.”

The ultimate consequences of the delayed gate opening and long lines was the breach of the fencing by hundreds of Event patrons who entered the park without security screening. According to Ms. Carmody, “Mr. Lucky testified that at one gate alone, he saw and still had a box in his office containing over 160 knives, butane canisters, flammable fluids, and other dangerous items.” Mr. Lucky admitted that, “...the individuals who broke through the fence were not wanded and checked and therefore likely brought weapons and flammable items into the park.” Ms. Carmody argues that Mr. Lopez is solely responsible for the Security Plan, which according to the testimony was insufficient for this event and less than the security needed for the 2016 Rally at the same location.

She concludes by noting that, “the breach in the fence, and delay in opening of the gate entrances constituted a violation as assessed by Ms. Haynes and resulted in several substantial safety risks”. She continued, “...Commander Phelan testified that there were several arrests that day and a shooting that occurred outside the event by a patron of the event.” She conclude, “...it is no defense to argue as in the food violations ‘no one was hurt’ and does not refute the violation of the Permit.”

3. Trash Management Violations Failure to follow trash plan - § 8.4.4, and § 6.4.6

Ms. Carmody and the Department allege that Mr. Lopez failed to comply with two separate trash requirements that are part of his Permit plan and the Policy. One violation was the failure to comply with the trash plan and provide the required number of trash receptacles and illegally allowing city trash containers to be used. Secondly, Mr. Lopez failed to dispose of trash throughout the day of the event. The City references that § 8.4.4, § 6.4.6, and § 6.1.3.11 of the Policy apply and Mr. Lopez failed to comply with these provisions. As quoted from NOV:

“Further, Section 6.4.6 of the Policy states:

All trash and waste, including but not limited to grease, sewage, plates, cups, utensils, and food waste shall be disposed of in dumpsters, trash receptacles, and recycling containers supplied by the Permittee. Permittee is responsible for providing the proper and prompt removal and disposal of trash and waste products. Existing trash containers

in a Park may not be used to supplement or replace the trash containers and trash removal service required for the Event. (Emphasis added)”

Ms. Carmody notes that pursuant to the permit and trash removal plan, Mr. Lopez was to include an invoice, purchase order, or contract. According to the plan, Mr. Lopez was to provide a proposal from JM Production’s, LLC to deliver: “3- 30-yard rolls offs; 80- 45-gallon plastic trash can drums; 160 trash can liners, be delivered and placed in the park by the time the Event started at 10 a.m.” The testimony of Ms. Karlee Bobzien, Parks Staff Event Coordinator, indicated that she was at the Event from 7 a.m. through 8 p.m. and noticed that, “...the trash boxes were not in the park, and by late morning the trash accumulated and overflowed.” Similarly, she cites the testimony of Park Ranger Samuel Gannon who took pictures of the City trash cans overflowing and garbage strewn all over the park. (See Ex. C and Ex. E of the City’s hearing exhibits; See also, the HALO videos in the record showing the trash during and after the Event.)

4. Trash Management Violation - Failure to dispose of trash during the event § 6.1.3.11

Correspondingly, Section 6.1.3.11 of the Policy states:

The *Permittee* is responsible, *during the Event* and Load-In and Load-Out, *for the timely and effective cleaning and sanitizing of all areas of the Event Site* and, if required, any other City-owned property used or impacted by the Event. This obligation shall include the *removal and proper disposal of trash and waste* and the removal of any markings or any graffiti on the property that occurred during or related to the Event.”

Ms. Carmody notes that the testimony of Ms. Bobzien, Mr. Walter, and Mr. Lopez establishes that the trash containers did not arrive at 11 a.m. and another company was hired to deliver trash containers. Both Mr. Lopez and Mr. Walter confirmed at the hearing that the trash boxes were missing and not placed in the park as required. The witnesses, Mr. Walter and Ms. Bobzien, further testified that, “The trash boxes were not present and did not arrive until sometime in the afternoon either at 1:30 p.m. or 3 p.m.” Ms. Carmody argues the net effect of not having trash containers, “...was to allow patrons of the Event to use the City trash containers (prohibited under the Policy), which led to overflowing trash containers all morning and allowing trash to accumulate on the ground throughout the Event. Citing Section 6.1.3.11.” Ms. Carmody states this Section is applicable and a distinct different violation from Section 6.4.6 and the failure of Mr. Lopez to clean up trash during the event led to a violation of this section. She argues that, “...not having the requisite trash containers in place and available at the appropriate time is one violation, but not timely and effectively cleaning and sanitizing throughout day-long event is separate substantial Policy violation.” Ms. Carmody continues that, “...this Policy violation cited by Ms. Haynes is appropriate and to argue the trash was ultimately cleaned up by April 21, 2017 is a ‘red herring’.” In conclusion she argues that, “...as in the other above violations of the Policy, the act of violating the Policy is an offense, to argue the violations were not substantial or injurious is not factually or legally correct.”

5. Public Works permit and Right of Way Violations. Policy § 3.12.1, § 3.12.2.1, and § 3.12.2

Citing Policy § 3.1.2.1 Permit Compliance, § 3.12.2.1 Right of Way or other City Property, and § 3.12.2 Public Right of Way, Ms. Carmody argues that, "...the testimony of Ms. Kelly Colvin, Public Work Supervisor, establish that Mr. Lopez violated several sections of the Policy and his Public Works Permit." Taking the testimony of Ms. Colvin she lists the Public Works and Right of Way violations including: (Exhibit G)

- a. Vehicles in the lanes of travel,
- b. Vehicles on the sidewalk,
- c. and in sidewalk areas,
- d. Barricades in traveled lanes were prematurely removed,
- e. Port-a-Lets left in open traffic lanes with no barricades,
- f. Cars parked on the sidewalk,
- g. Detour signs knocked down, and
- h. Pedestrians walking on the sidewalk due to downed security fences

Ms. Carmody argues that, "...all the violations noted above amounted to 3 substantial violations of the Policy and violated Mr. Lopez Street Occupancy Permit (Exhibit J, Halo Camera), which did not allow for occupying sidewalks (Public Works Rules and Regulations Sections III (3); Section II (2))."

6. The Parks Manager under the City Charter (§ 2.4.4 (A)) has the authority to assess the consequences under the Policy for the NOV against Mr. Lopez

Ms. Carmody argues that Ms. Haynes under the City Charter and the Policy, "has the exclusive authority to determine the consequences for Mr. Lopez's violations" which occurred at the 420 Rally (Policy 1.2, 1.2.4, and 1.4.1). Ms. Carmody states that, "...it is Lopez's burden to demonstrate that she was acting outside the course of her authority." (Park Use R&R's § V §§ G). She notes the testimony of Ms. Haynes, Parks and Recreation staff, Public Works staff, Denver Police Department, and DEH witnessed during and after the event, and her conclusion is that, "Ms. Haynes has the "purview and authority" to assess all penalties under the Policy for the violations against Lopez, up to and including the consequence of barring Mr. Lopez from any event permit for three years. *McLauthlin v. City and County of Denver*, 280 P.2d 1103, 1106 (Colo. 1955) (The "Denver Charter grants the Manager of Parks broad discretion in determining the uses to which a particular park area may be put."). When government agencies and officials act in the course of their statutory duties, their actions are presumed to be valid. *Public Utilities Com'n v. District Court*, 431 P.2d 773, 776-77 (Colo. 1967)."

7. Legal Arguments and Defenses of Mr. Lopez

In summary, Ms. Carmody argues that Mr. Corry on behalf of his client, Mr. Lopez, presents three rationale for his client's defense:

1. "He did not commit the violations personally or intentionally, instead it was the people he hired who failed meet their contractual obligations and committed these violations;
2. No one was injured by these violations and there was no lasting damage; therefore, the violations are not substantial; and

3. His constitutional rights were violated because the 420 Rally Event was not treated similarly to other events”.

She argues that these defenses are wrong and deficient given the evidence and the authority under the Charter, Policy and Parks Use R&R's. Ms. Carmody notes that Mr. Lopez is incorrect in arguing that, "...the number of violations and the resulting penalties are in any way erroneous." In listing the violations, she concludes that, "...29 violations were always assessed against Lopez and Parks has been consistent fair and accurate in articulating the number of violations." In summary she concludes that, "The allegations raised by Lopez are not supported in the record and constitutional argument is false and irrelevant. The penalties assessed are fair and consistent with the Policy and should be sustained in this appeal."

B. The Petitioner through Counsel Robert Corry in his brief and documents from the Record notes the following facts and argument:

Mr. Lopez through counsel, Robert Corry, initially argues that the City carries the Burden of Proof (BOP) under this administrative proceeding pursuant to Parks R&R Section V. G (Park R&R) and the Parks Public Event Policy (Policy). He recognizes that, "...the Appellant can present countervailing testimony or evidence to show lack of guilt on the facts, or based on the law that the citation or penalty is objectionable, incorrect or not lawful." He then notes that, "...the Administrative Hearing Officer (AHO) in his ruling has the discretion under the Park R&R to (1) uphold the violation and penalty; (2) uphold the violation but find mitigation of circumstances and reduce the penalty; or (3) dismiss the violation as unproven. See Denver Department of Parks and Recreation, Administrative Citations Rules and Regulations, as adopted 5-11-12, Section VI (B)."

Mr. Corry argues that, "...his client is not waiving his right to raise challenges to enforceability, legality or constitutionality of the Park R&R's (Park R&R Section V. G.)."

Mr. Corry, argues that, "...violations committed by Permittee Workers, as defined in the Policy, are subject to fines and not loss of Priority Status and assumedly their status is not considered for purposes of this appeal." He agrees that the September 19, 2017 evidentiary hearing and Post Hearing Briefs relate to those evidentiary matters raised in the City's NOV. Regarding the NOV and evidentiary hearing he agrees that, "...there are at a minimum five (5) allegations filed against his client, Mr. Lopez. There is disagreement with the city and how the violation are categorized, that is, 29 violations in 5 categories (City) or simply 5 violations in total."

Those agreed upon violations according to Mr. Corry are:

1. Safety and Security
2. Trash 1
3. Trash 2
4. Food Vendors
5. Other City Violations

He concludes that, "...if the city prevails on all four of the above listed allegations Mr. Lopez cannot be penalized with a three-year ban from holding a permit because that ban only applies to a fifth violation in three (3) years."

1. Safety and Security

Mr. Corry in his brief argues that the security violation consists of four (4) agreed upon facts. Those include:

1. "A delay in opening of one of four (4) Ingress points,
2. Not enough security personnel,
3. Unspecified numbers of instances of attendees pulling down a section of fencing which was replaced by security personnel, and
4. Long lines of people waiting to attend the event."

Arguably, he notes that the delay was brief, the number of fence breakdown is unknown, the number of security guards was agreed upon, and the event is popular.

Regarding the allegations Mr. Corry argues that, "...the violations were primarily the fault of Permittee Workers not Mr. Lopez and at worst the allegations are not substantial. Specifically, he notes the delayed gate opening was the fault of Wright Group the fence contractor, the fences taken down were the fault of attendees and quickly repaired, given the magnitude of this event 'unforeseen and reasonable variables occur', and all problems were quickly corrected and are standard for this type of event." He alleges, "...the response of Mr. Lopez was reasonable and within the bounds of industry standards given similar circumstances." (Pg. 4 Corry's Post Hearing Brief)

2. Trash 1

It is argued that this category of Trash relates to the timing of the trash pick-up, and an alleged violation of Section 6.1.3.11 of the Policy. Mr. Corry argues that the Permit required Mr. Lopez to clean up Civic Center Park by Friday, April 21, 2017 and this was accomplished by 5:00 p.m. that day. He alleges that, "...the violation was manufactured and enhanced by the media in an effort to condemn the Rally." Mr. Corry argues that, "...the City approved the Permit and Run of Show regarding Trash, and the violation is not proven given the cleanup by 5:00 p.m., regardless of the trash delay and accumulation the day of the Rally."

3. Trash 2

Mr. Corry, similar to the above noted violation, dismisses the City's allegation as an attempt by the City to fabricate a violation. He alleges that, "...the delivery and delay of trash receptacles is not a substantial violation and is not different in kind than managing trash." Similar to Trash 1, he states that, "...the violation is the fault of Permittee Workers, the violation was quickly corrected and was fabricated by the media on behalf of the City."

4. Food Vendors

Mr. Corry alleges that, "...the food vendor health violations are duplicitous and again the primary fault of the Permittee Workers (Food Vendors)." He continues, "...even if the food vendors were unlicensed the mitigation exists in that the unlicensed vendors were removed with no adverse effects." He notes in conclusion that, "...given the Permittee

Workers fault, Mr. Lopez cannot be penalized given the language of the Policy and the NOV fine assessment.”

5. Other City Violations

This violation concerns street closure permit violation as noted by the NOV and arguments of the City. Mr. Corry alleges that, “...these violations: media truck on sidewalk, side walk sign down, fencing being down blocking sidewalks, barricades in place, and long lines were previously cited in the Public Works section and are therefore not a distinct violation.” As noted in the above sections, Mr. Corry alleges that, “...vendors/ Permittee Workers are at fault for the violations, and Mr. Lopez fulfilled his requirements under the respective permits.”

Mitigation

In arguing mitigation Mr. Corry references the 2018 Rally and steps to be taken to compensate for the 2017 issues. He also repeats that, “...the Permittee Workers are also faulted and penalized and therefore to penalize Mr. Lopez with loss of Priority Status is unnecessary.” In closing he argues, “...the City has failed to prove any allegation in the NOV are the fault of Mr. Lopez, but the result of the Permittee Workers.” Lastly, in closing he argues that, “...the City has not demonstrated that the violations were substantial or any injury or harm to the public health, safety and welfare. No harm, no foul.” He request that, “the violations should be dismissed, or in the alternative, mitigation should be found, and the loss of Priority Status and prohibition on allying should be rescinded, and for other relief proper in the premises.”

FINDINGS OF FACTS

1. The Denver Department of Parks and Recreation Department File, the testimonial evidence, and documentary evidence establishes by a preponderance of the evidence that Miguel Lopez and The Denver 420 Rally, are guilty of all the violations cited in the Notice of Violation issued May 19, 2017, by Allegra “Happy” Haynes, Executive Director of the Denver Department of Parks and Recreation (Parks Use R&R’s § V §§G). It is also found that Mr. Lopez did not by countervailing testimony and evidence meet its burden of demonstrating that he and the 420 Rally are not guilty of the violation cited in the NOV. In addition, it is found that Mr. Lopez and the 420 Rally has not met its burden to show that the “NOV and penalty is objectionable, incorrect and not enforceable. (Parks Use R&R’s § V §§G) It is found that city through Executive Director, Ms. Haynes met the requirements of the Public Event Policy and the Administrative Citation Rules & Regulation and D.R.M.C. ordinances and has proven that the decision of the DPR was supported by substantial evidence in the Record.
2. Preponderance of the evidence is a standard of proof in which the “party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not.” C.R.S. Section 13-25-127 (1) (4)

3. The decision on this Appeal request is based on the DPR Record, the evidentiary hearing, and documentary evidence. Parks Use R&R's § V §§ G. and D.R.M.C. § 28-33 (c).
4. The decision of the DPR's NOV is affirmed unless the Hearing Officer determines, based on the entire Record, that the decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of the applicable ordinances or regulations of the DPR Policy and Parks Use R&R's. The inquiry is whether there exists, in the Record, any competent evidence rising to the level of the preponderance of the evidence supporting the decision of the Department.
5. Title II Article XII Chapter 2 of the Denver Revised Municipal Code, state the Standard for Review in Section 2-291 § (a) Administrative enforcement order:

“The decision of the AHO shall be entitled ‘administrative enforcement order’ and shall be issued in accordance with the rules and regulations of the department issuing the administrative citation. b) As part of the administrative enforcement order, the AHO shall issue a final decision regarding the violations alleged in and penalties assessed by the administrative citation. The order shall:

1. Uphold the administrative citation and penalties as to any violation proven by the city;
2. Dismiss the administrative citation and penalties as to any violation not proven by the city; and
3. Require payment of any outstanding assessed penalties and costs by a specified date.”

Parks Uses R&R's § VI §§ B (as amended November 18, 2015) is applicable and similar language:

“B) ...the AHO shall issue a final decision, regarding the violations alleged in the penalties assessed by the administrative citation. The order shall:

1. Uphold the administrative citation and penalties as to any violation proven by the city;
2. Dismiss the administrative citation and penalties as to any violation not proven by the city;
3. In addition to the actions specified in 1) or 2) above, enter such other reasonable order to the Responsible Party that will help assure future compliance with the Park Use R&R's commensurate to the nature and extent of the violation(s) which is the subject of the AEO; or
4. Require payment of any outstanding assessed penalties and costs by a specified date.”

This section of the Parks Uses R&R's will be used in the decision of this Appeal.

6. As noted above, this matter arose from the June 2, 2017 Appeal filed by the Appellant Miguel Lopez and the Denver 420 Rally in response to the May 19, 2017 Notice Of Violation filed by the Executive Director of Parks and Recreation, Allegra “Happy” Haynes.
7. The Appellant filed for an Appeal hearing on or about June 2, 2017 and the AHO was appointed by the Executive Director on July 23, 2017.
8. This administrative Appeal hearing was heard on September 19, 2017; at the hearing the parties stipulated to and objected to evidentiary matter and the Parks

Administrative file. The record and following exhibits were admitted by the AHO at the conclusion of the hearing on September 20, 2017. The record and evidence admitted and taken under consideration by the AHO included the following:

- a. The testimony from the September 19, 2017 through September 20, 2017 evidentiary hearing,
 - b. Stipulated Testimony of Kris Ryan,
 - c. City Attorney Exhibit Book Exhibits A through J,
 - d. Record of Appeal , July 24, 2017,
 - e. Halo Camera Tapes 1 through 5, and
 - f. CORA documents 981 pages as requested by Robert Corry:
Including all City permits, Permit Logs, Run of Show, and Parks Permit file
9. Following the administrative Appeal hearing the parties were advised that the recorded transcript would be available immediately and that Post Hearing Briefs are Ordered and due October 12, 2017. The AHO advised the parties that upon receipt of the briefs a decision would be rendered by November 19, 2017 pursuant to Parks Use R&R's § VI §§ A-B. Both parties submitted post hearing briefs on or about October 12, 2017 and were received by the AHO by first class mail and email.
 10. The Denver Parks and Recreation Department and City of Denver's NOV of May 19, 2017 sent and responded to by the Appellant initially sets forth the issues raised by the Parks concerning violations at the 420 Rally of Mr. Lopez. Subsequently, in pre-hearing briefs and the administrative Appeal hearing the City listed the violations and presented facts in which it was proceeding against Miguel Lopez and the 420 Rally. Mr. Corry filed a request for hearing and general denial regarding the NOV allegations (File July 7, 2017 and June 2, 2017); however, no written objection was filed regarding the issues presented at the evidentiary hearing.
 11. Ms. Carmody, Assistant City Attorney, presented the testimony of seven witnesses to prove the Allegations contained in the NOV and Pre-Hearing Brief. Kris Ryan, Parks Permit Administrator, testimony stipulated in writing, given a recording error, Karlee Bobzien, Event Facilitator Denver Parks, Sam Gannon, Denver Senior Parks Ranger, Allegra "Happy" Haynes, Executive Director, Parks and Recreation, Patrick Phelan, Incident Commander Denver Police Department, Sally Born, Investigator II Denver Public Health, and Kelly Colvin, Project Manager II, Denver Public Works. Their respective testimony will be noted in the Findings and Order.
 12. Mr. Corry, Counsel for Mr. Lopez and 420 Rally in his Pre Hearing statement proposed to call thirteen witnesses; however, during the course of the hearing he offered the testimony of three (3) witnesses: Miguel Lopez, Director of 420 Rally and Permit Holder; Santino Walter, 420 Event Coordinator; Maurice Lucky, Owner JCJ Security, Security Director 420 Rally. Their respective testimony will be noted in the Findings and Order.
 13. The Record and Findings establishes that Miguel Lopez was the Permittee for the 420 Rally held on April 19, 2017 at Civic Center Park, in the City and County of Denver, Colorado. (City Exhibit Permits, § 2.36 Policy) Mr. Lopez sought and received Permits from the Denver Department of Public Works for ROW Street Occupancy, and Right-of- Way Occupancy and Use. (City Exhibits J).
 14. Pursuant to the NOV, Pre-Trial statement (Parks Use R&R's § V §§ B) and the evidentiary hearing the following violations were alleged by Ms. Haynes:

- a. Trash. Pursuant to Section 8.4.4 of the Policy, “I find that as the Permittee, you failed or substantially refused to comply with Sections 6.1.3.11 by failing to timely and effectively clean the Event site.” “I also find that as the Permittee you failed or substantially refused to comply with Section 6.4.6 of the Policy by failing to provide trash receptacles.”
- b. Safety and Security. Pursuant to Section 8.4.4 of the Policy, as Permittee, “I find that you have failed or refused to substantially comply with the approved safety and security plan, under Section 8.4.4 of the Policy.”
- c. Health Violations. Section 6.16 of the Event Policy states that you, as the Permittee, are required to comply with all rules and regulations, requirements, restrictions, permits, licenses, approvals required or imposed by any other City Agency.
- d. “As the Permittee, you are also responsible for the violations caused by Permittee Workers. Section 8.4.5 of the Policy. This constitutes 15 separate violations by Permittee Workers.”
- e. Other City Agency Violations. “Finally, I am advised by Public Works that you also violated certain street closure permit requirements. First, you permitted vehicles to be on the sidewalk during the Event. Section II (2) of the Public Works Rules and Regulations Pertaining to the Issuance of Permits by the City Traffic Engineer (Public Works Rules) requires a Street Occupancy Permit for any vehicle that is occupying the “traveled lanes, sidewalk, and sidewalk area”. Your Street Occupancy Permit did not include occupying sidewalks.

Violations by Permittee:

Based on my evaluation, I find that you have violated the following provisions under Section 8.4.4 of the Policy:

- Failed or refused to substantially comply with an approved plan (security plan);
- Failed or refused to substantially comply with any applicable Requirements set forth in Part VI or Part VII of the Public Event Policy, by violating Section 6.1.3.11 of the Policy (trash);
- Failed or refused to substantially comply with any applicable Requirements set forth in Part VI or Part VII of the Public Event Policy, by violating Section 6.4.6 of the Policy (trash);
- Eight counts of failed or refused to substantially comply with Part VI or Part VII of the Public Event Policy, by violating Section 6.16 of the Policy (unlicensed food vendors);
- Three counts of failed or refused to substantially comply with Part VI or Part VII of the Public Event Policy, by violating Section 6.16 of the Policy (Public Works street occupancy permit violations).”

15. Following the violations allegations of the Policy, Ms. Haynes imposed the penalties pursuant to Section 8.4.4 of the Policy noting the following penalties: “Since I find multiple violations from this Event, I am imposing the following penalties: Please note that the penalties listed above are cumulative.

- First violation: consider this letter your written warning

- Second violation: \$100 plus 10% of \$7,975.00 permit fee = \$897.50
- Third violation: \$100 plus 20% of \$7,975.00 permit fee = \$1,695.00
- Fourth violation: \$100 plus 30% of \$7,975.00 permit fee = \$2,492.50 and loss of Priority Event status
- Fifth violation: Barred from being granted any event permit for three (3) years and loss of Priority Event Status.
- The total penalty amount for violations by Permittee is \$5,085.00, plus the loss of your Priority Event status, and you (both individually and as your company) will not be eligible to obtain any event permit for three years.”

16. The Denver Parks and Recreation Public Event Policy, adopted October 25, 2016 is applicable and the following sections are noted:

“1.2 Section 2.4.4(A) of the Denver City Charter (“Charter”) delegates to the Department of Parks and Recreation (“DPR”) the duty and power to manage, operate and control all facilities located within and without the boundaries of the City and County of Denver and owned by the City for park and recreational purposes. This authority includes the power to permit and regulate outdoor public events of various sorts in Denver parks, as provided for in this Public Event Policy. The authority of DPR to issue permits and regulate public events as provided in this Public Event Policy is affirmed in Article II (Scheduled Events) of Chapter 39 (Parks and Recreation) of the Denver Revised Municipal Code (“Parks Permitting Ordinance”).

1.2.3 Charter Section 2.4.4 (A) also delegates authority to DPR to establish rules and regulations, such as are set forth in this Public Event Policy, and to enforce such rules and regulations subject to ordinance approval. Enforcement is provided for in the Parks Permitting Ordinance and by other means set forth in Article I of Chapter 39 (Parks and Recreation) of the Denver Revised Municipal Code.

1.2.4 Additional authority is granted in the Parks Permitting Ordinance for DPR to adopt rules and regulations for the use of administrative citations in accordance with Article XII of Chapter 2, D.R.M.C. DPR has exercised this authority by adopting a separate set of rules and regulations for administrative citations and establishing an administrative system for, among other things, issuing citations, collecting civil fines, and conducting appeals. This administrative system is set forth in the Administrative Citations Rules & Regulations adopted 5-11-12 and as subsequently amended.

1.4.1 Penalties: The Parks Permitting Ordinance makes it unlawful for any person to violate any procedures, requirements, restrictions, conditions or rules and regulations adopted by the DPR Executive Director in this Public Event Policy or the terms and conditions of any permit issued under this Public Event Policy and provides for the enforcement of the Public

Event Policy and the Parks Permitting Ordinance through penalties imposed by the courts and through administrative citations. DPR has exercised its administrative enforcement authority by through the Administrative Citations Rules & Regulations adopted 5-11-12 and as subsequently amended and by establishing an administrative system for issuing administrative citations, collecting fines, and conducting appeals.

2.36 Permittee means an individual or a non-profit or for-profit entity who or which makes Application to, and obtains, an Event Permit from the Permitting Office, for the holding of an Event.

2.37 Permittee Worker means any employee, worker, volunteer, contractor, subcontractor, service provider, supplier, vendor, exhibitor, performer, entertainer, athlete or similar person authorized or retained by the Permittee with respect to the operation and function of an Event.”

3.1.2 The issuance of an Event Permit is subject to the general provisions and review criteria set forth in this Part III of this Public Event Policy and on the condition that there is compliance with the Requirements in Parts IV, V, and VI of this Public Event Policy.

17. The City presented evidence regarding the allegations in the NOV to establish that on April 20, 2017 Miguel Lopez, Permittee, failed to comply with the requirements of the Policy. The evidence (Record, testimony, and Exhibits) establishes by a preponderance of the evidence that Miguel Lopez and the Denver 420 Rally violated the following Policy sections.

- a. Trash Failure to follow trash plan Policy § 6.4.6
- b. Trash Failure to clean park during event Policy § 6.1.3.11
- c. Safety and Security Policy §8.4.4 and 6.16
- d. Public Health: DEH code violations § 10-13 (A-C), Policy§ 6.16 (15 Violations)
- e. Public Right of Way Policy § 6.16, 3.12.1,3.12.2, 3.12.2.1 (3 Violations)

It is noted that contained within each of the five (5) violation categories, 29 separate and distinct Permittee and Permittee Worker violations were committed during this event on April 20, 2017 at Civic Center Park.

18. The evidence for the **Trash violation** concerning failure to follow the trash plan includes the testimony of Karlee Bobzien, Parks Event Coordinator and Sam Gannon, Senior Parks Ranger and photographs found in Exhibit C. Ms. Bobzien testified that she attended the event throughout the day, took photographs, and spoke to Mr. Walter and Mr. Lopez about the lack of trash containers and trash accumulation. She testified that the Policy requires the trash containers to be in place prior to the event (10:00 a.m.) and in this case, the containers required under the plan did not arrive until the afternoon. Additionally, the Policy does not allow City trash containers to be used, according to her testimony and that of Ranger Gannon and photographs, the lack of Event trash containers forced people to use

the City trash container to the point of spilling over and onto the ground (Exhibit C- E). Mr. Walters and Mr. Lopez confirmed that the trash container noted in the plan were late in arriving, approximately 11:30 a.m., and not in place at the start of the Event, resulting in City trash containers to be used. Both dismissed the violation as not substantial, testifying that, "...it was the fault of the trash company (SB Porta Bowl) and ultimately the containers were in place." The untimely delivery of trash containers by SB Porta Bowl, even if correct does not relieve the Permittee from complying with the Policy, the plan and ensuring the 'prompt removal and disposal of trash and waste products. And not using existing City trash containers'. Section 6.4.6 of the Policy states:

"Trash and waste: All trash and waste, including but not limited to grease, sewage, plates, cups, utensils, and food waste shall be disposed of in dumpsters, trash receptacles, and recycling containers supplied by the Permittee. Permittee is responsible for providing the proper and prompt removal and disposal of trash and waste products. Existing trash containers in a Park may not be used to supplement or replace the trash containers and trash removal service required for the Event."

Even, if viewed in the best light, the Permittee failed to have trash containers delivered in a timely fashion resulting in city trash containers to be used, in clear violation of the Policy. It is no defense to argue that the trash company was at fault or there was no substantial harm, the use of one city trash container is a violation and as noted by Mr. Bobzien and Ranger Gannon the city trash containers were overflowing resulting in widespread trash accumulation. Section 6.1.3.6 places the burden on the Permittee, Mr. Lopez, for contracting with, and supervising all Permittee Workers and assuring faithful performance of the contracted duties. Mr. Lopez is responsible for the ultimate performance of the Trash Plan and the Permittee Workers obligated to perform their duties under the contracts, this clearly was not accomplished.

19. The **second trash violation** is the 'timely and effective disposal of trash throughout the course of the event'. Clearly, this is distinguishable from the violation of the trash plan and violates the trash pick-up plan and § 6.1.3.11 of the Policy. This section states in part:

"The Permittee is responsible, during the Event and Load-In and Load-Out, for the timely and effective cleaning and sanitizing of all areas of the Event Site and, if required, any other City-owned property used or impacted by the Event. This obligation shall include the removal and proper disposal of trash and waste and the removal of any markings or any graffiti on property that occurred during or related to the Event."

The testimony of Ms. Bobzien and Ranger Gannon is illustrative of the on-going problem of the disposal and accumulation of trash during this event. The Exhibits (Exhibit C and E Photographs) are evidence of the on-going issue throughout April 20, 2017, when initially trash containers were not delivered or at best, delivered late, and the failure of the Permittee to develop a plan to ensure timely picked up debris and trash. The testimony of both Mr. Lopez and Mr. Walter indicate that no attempt was made to timely

and effectively pick up the trash, except to wait for the delivery of trash containers, which occurred at 11:30 a.m. The burden and responsibility of prompt and proper removal and disposal of trash and waste products falls on the shoulders of the Permittee, Mr. Lopez. As noted above it is no defense to argue that the Permittee Workers are at fault, no injury/harm, or the park was ultimately cleaned. Section 6.1.3.11 requires the timely and effective cleaning and sanitizing of the event area, 'timely and effective' does not include the next day.

20. Safety and Security Policy § 8.4.4, § 8.4.5 and § 6.16

The NOV alleges and the City argues that Mr. Lopez violated § 8.4.4 and § 8.4.5 of the Policy, which required Mr. Lopez and his Permittee Workers to substantially comply with his approved plans (City Exhibit A: 420 Security Plan). Mr. Lopez submitted and received approval for his Safety and Security Plan for the Event (*See* Exhibit A). In the evidentiary hearing Mr. Lopez, Mr. Walter, and Mr. Maurice Lucky testified that the Event had security staff hired by Mr. Lucky, and thought they followed the plan exactly. However, the testimony and Exhibits (See Exhibit E and F) presented established that the security plan required four security entrances opening at 10 a.m.; however, there was a delay of at least 2 hours before opening the fourth gate. According to Mr. Lopez this was due to lack of tables and needing a tool to break open the chains on the 4th gate. Mr. Lucky testified that he thought, "...the fourth gate opening was delayed by at least an hour before the appropriate tool was located." Commander Phelan, Denver Police Department, testified that from his Event log of April 20, 2017, that the fourth gate was not opened until after noon. The testimonial evidence (Gannon, Phelan, and Lucky) shows that the failure of this gate opening exacerbated the long lines, caused disruption of security, and, more importantly, breached the Safety and Security plan. The City and Commander Phelan also state that the Plan also required the entire circumference of Civic Center Park would be fenced in, which did not occur (Appellant # 7 and Exhibit A).

Ranger Gannon noted from his report and the admitted photographs (Exhibit F) and through the HALO videos shown at the hearing, various security perimeter fences were broken. He testified that at least seven (7) times, "...fences were broken for prolonged periods of time near 4:20 p.m. with Police Officers and not 420 Rally staff re-erecting the fences." Commander Phelan testified that the gates at 14th and Bannock, as well as, at Colfax and Broadway were down numerous times, and not timely erected by 420 Rally staff. (Halo Camera April 20, 2017)

Additionally, the testimony of Commander Phelan, Mr. Lucky, Mr. Walter, and Mr. Lopez, indicate that numerous fences were breached and hundreds of Event participants broke through the fence and entered the park without passing through security checkpoint and having their bags checked for weapons. Mr. Lucky testified he observed, "...a box in his office containing over 160 knives, butane canisters, flammable fluids, and other dangerous items taken from one (1) gate." And, he noted that, "...the persons who broke through the fence were not wanded and checked." Mr. Lucky concluded that, "...the security plan in place was not sufficient given the anticipated number of people who attended, more security staff and more entrances were needed to manage the flow." In conclusion he noted that, "...in addition to more staff and gates, other aggravating factors

include the entertainment, time of day and week, and the lack of a security director.” He added that, “...the security plan, security director and event itself were at the discretion of the Permittee.”

The failure to follow the security plan and numerous plan malfunctions created a very troubling and potentially dangerous setting, where thousands of people were mingling with less than adequate security measures. Commander Phelan testified that, “...numerous people were arrested that day for criminal offenses and there was one shooting at or near the Event.” He also testified that throughout the day the gates were not fully manned, having 2 to 4 security guards and not the 6 security guards as the plan stated. To argue that there was ‘no harm or no injury’ per Mr. Lopez testimony is incorrect and minimizes a potentially dangerous circumstance, and more troubling is to blame the contracted permittee workers or the crowd.

Sections 8.4.4 and 8.4.5 are also applicable and state:

“Section 8.4.4. “Event Enforcement for Violations Caused by the Permittee: Upon issuance of the Event Permit and during the Event and Load-In and Load-Out, if the Permittee or any employees of the Permittee should do any of the following: Fails or refuses to substantially comply with approved plans;” The permittee is subject to the penalties in Sec. 8.4.4, the Permittee may be subject to the administrative citations as provided in Sec. 8.4.1.”

Section 8.4.5. “Event Enforcement for Violations Caused by Permittee Workers: Upon issuance of the Event Permit and during the Event and Load-In and Load-Out, if the Permittee Workers, other than employees of the Permittee, should do any of the following: Fail or refuse to substantially comply with approved plans.”

Whether or not Mr. Lopez argues the Permittee Workers are at fault and not himself, the Policy makes it clear the Permittee, Mr. Lopez, is liable under the Policy and subject to the penalties of the Policy including those listed in the NOV.

21. DEH Health and Food violations. Policy Section 6.16

As noted in the NOV, Section 6.16 of the Policy is applicable and states the Permittee, “... is required to comply with all rules and regulations, requirements, restrictions, permits, licenses, approvals required or imposed by any other City Agency.” Ms. Sally Born, Public Health Investigator II, The Department of Environmental Health, testified that, “Mr. Lopez was advised on multiple occasions before the Event that food vendors were required to be properly licensed to sell food at an event.” She noted that, “...on the day of the event in a routine inspection conducted by at least four Health Inspectors, the Department of Health, discovered that of the 35 food vendors, eight of the food vendors on the event site were not properly licensed.” Ms. Born testified that, “...specifically, three (3) of the food vendors (The Ginger Pig, Tacos Y Tortas La Reyna Azteca, and Frozen Matter) did not hold the required Denver mobile retail food establishment license and five (5) food vendors (World of Weed CBD, Sacred Body CBD, Saint Raphael of the Hills CBD, Icon Investments, and Box Studios) were operating without the required Denver temporary retail food establishment license.” Ms. Born testified that, “...Rule

10-13 (C) (Denver Rules and Regulations Governing Food Establishments), that requires event coordinators to allow only licensed vendors who sell regulated food products to participate in an event.” She indicated that, “...the inspections occurred in the morning before and during the event, and occurred on the event site with some vendors serving food before they were shut down by the inspectors for Critical Health Code Violations (§23-4-7 DEH).”

In addition to the unlicensed violations, Ms. Born testified that, “...14 other critical health code violations were also reported, those that create an imminent health hazard, those included violations of: no sink, no hot water, no water or soap, or commissary affiliation. (See Exhibit H).” She indicated, “...the inspections are part of the normal health department process for city events and are done to ensure a safe process and presentation of food to prevent foodborne illnesses.” According to Ms. Born, “...emails and discussions occurred with Mr. Lopez and Mr. Walters months in advance, including an email in February, sent to the 420 Event to ensure compliance and safe distribution of food.” On the day of the event Ms. Born did speak to Mr. Walter of the violations, he later testified that, “...he did remove the unlicensed vendors he was aware of or took other appropriate action.” She also testified that, “...the health code violations were reported to Ms. Haynes and reported to the health Department as part of their inspection process. (Exhibit H - 7 reports).”

As noted above, the Permittee, is responsible for the violations caused by Permittee Workers. Section 8.4.5 of the Policy provides that, “...if any of your Permittee Workers (defined as “employee, worker, volunteer, contractor, subcontractor, service provider, supplier, vendor, exhibitor, performer, entertainer, athlete or similar person authorized or retained by the Permittee”) fails or refuses to substantially comply with required permits or licenses from other City agencies, then you are subject to certain penalties.” Policy, Section 2.3 provides that the rules and regulation of the DEH are applicable to the Event and Mr. Lopez, Permittee, the evidence establishes that he was advised months in advance of the DEH food regulations regarding food vendors, mobile food vendors, and the licensing requirements involved. According to Ms. Born, the food regulations applicable include those of the Event Coordinator (DEH food regulations at Page 4), “Event Coordinator means the individual or entity responsible for permitting, obtaining approvals, and maintaining compliance with the applicable Codes for a Temporary Event.”

It is no defense by Mr. Lopez that the Permittee Workers (Food Vendors) are responsible, and the City double counted the violations. Clearly, the City code (DEH, Policy) places the burden on Mr. Lopez to comply with and assure compliance with the applicable rules and regulations and Policy. To argue otherwise is incorrect, legally and factually, and contrary to what the Policy clearly expected of a Permittee or Event Coordinator. Section 6.16 is clear, “The Permittee is required to comply with all rules and regulations, requirements, restrictions, permits, licenses.... by any other City Agency”. There is no intent required; policy requires compliance, the evidence establishes that given the number of health food violations, Mr. Lopez is at fault and placed many people at risk as noted by Ms. Born, “Foodborne illnesses are not readily apparent and can occur 50 days

later, in this case there is no way of knowing if people ingested food contained foodborne issues.”

22. Public Work violations – Obstruction of Right-of-Way. Policy 3.12.1

§§ 3.12.2., 3.12.2.1 and Denver Department Public Works Rules and Regulations Section III (3):

“§ 3.12.1 General: As a condition of obtaining and retaining an Event Permit under this Public Event Policy, the Applicant must obtain and comply with all permits, licenses, authorizations and other approvals required from City Agencies with regulatory jurisdiction over various aspects of the Event and with operational jurisdiction over City-owned or –controlled property which may be impacted or used by an Event. If a business license or other permit or approval are required from the Denver Department of Excise & Licenses for the Event, the Permittee shall obtain, pay for, and keep in effect any such license.

Public Works Rules and Regulations Section III (3)

The location of all signs, pavement markings and barricades as specified on the permit will be strictly adhered to at all times by the Permittee. All of part of the same shall be removed from the street when not in use or as directed by the City Traffic Engineer or designee. When a lane is being utilized as the permit specifies, all barricades and signage shall be in place. Where the City Traffic Engineer or his designee deems it necessary to modify a permit for the improvement of traffic flow, the Permittee shall comply with the modifications.”

Mr. Corry argues that this violation is used by Ms. Haynes as a catch-all for the street and sidewalk closures and barricade issues. The above noted Policy sections place the burden on the Permittee to obtain and comply with all licenses and requirements of other City agencies including Public Works. Ms. Kelly Colvin, Project Manager II, Public Works, testified that, “Mr. Lopez did obtain Permits from Public Works Department (City Exhibit J), but failed to comply with the regulations applicable from Public Works.” She testified that from her report, which included photographs, as part of her review of the Event that, “...several violations occurred including: several vehicles were in lanes of travel; the sidewalk and sidewalk areas; and a truck, vehicle, camper and port-a-lets was in a lane of travel on April 20; and finally traffic barricades were removed prematurely on the 20th as well.” (City Exhibit G). Ms. Colvin testified specifically that, “...the Event did not have permission to block sidewalks which occurred due to fences being down, barricades down or people standing in long lines waiting to enter the Event. The result of blocked sidewalks was the inability of pedestrians and the handicapped from navigating the sidewalk and having to enter the lanes of travel, including Broadway, from 14th to Colfax, which was not permitted and was not lawfully closed.” (City Exhibit G). Although Mr. Lopez argued he wanted to close Broadway, Ms. Colvin testified that, “...the request was not made of the City.” She also showed photographs of ‘active traffic’ traveling on Bannock which was prematurely opened as port-a-lets are being removed. She noted that as per Mr. Lopez’s permit, “...street barricades were to be

removed only after existing elements are removed, which clearly did not occur, endangering the traveling public.” According to Ms. Colvin, the removal or picking up of signs and barricades is the responsibility of the Permit holder, Mr. Lopez, and there is no exception.

According to Mr. Corry, the vehicle shown in a photograph belonged to a local News stations; however, it is noted that Mr. Walter and Mr. Lopez were conducting an interview with the News crew at that time. It was argued that signs or barricades were down due to the wind; however, Ms. Colvin, as noted above, indicated, “...the Permit Holder has an absolute duty under the Permit, to raise the signs regardless of the problem and not allow the opening of traffic lanes if ‘existing elements’ are in traffic lanes.” No evidence was presented that the violations listed in this section or the others, were the fault of third parties beyond the control and supervision of Mr. Lopez. To continually argue, “No harm no foul” misses the focus of the Policy and other City code provisions, a violation of the sections with or without intent is a violation, and as noted by Ms. Born and the other evidence, there was harm to the public. As with the other listed violations, Mr. Corry argues the ‘Permittee Worker’ is at fault; therefore, the Permittee is not responsible, which again misses the focus of the Policy. The Permit Holder, is the party at fault, regardless of whom he contracts or retains to do the specific work. In part, Section 3.12.2 and 3.12.2.1 state clearly what is required:

3.12.2 Right of Way or other City Property: “... The Permittee must comply with all requirements, procedures and rules and regulations as set forth in this Public Event Policy in addition to established standards, practices, guidelines, requirements, rules and regulations and/or fee requirements of the City Agencies related to right of way or other City property. 3.12.2.1 Public Right of Way: The Applicant for an Event Permit shall make application and obtain any street occupancy permit and any other permit or license required by the Denver Department of Public Works (“Public Works”) for the closure and use of any right of way under the jurisdiction of Public Works. This closure and use includes parking, traffic control and Load-In and Load-Out. All permit requirements imposed by Public Works shall be complied with and all fees and charges required by Public Works shall be paid for, in addition to the requirements and Fees of DPR under this Public Event Policy.”

The language of the Policy is mandatory it is not permissive, these are the conditions under which Mr. Lopez obtained the Event Permit and other City permits, including Parks and Public Works.

PENALTIES – Policy §§ 8.4.1- 8.4.4

Ms. Haynes, Executive Director of the Department of Parks and Recreation in her ‘Conclusion of the Notice of Violation’ found the following five (5) violations and assessed the following penalties pursuant to §8.4.4.

Violations by Permittee: “Based on my evaluation, I find that you have violated the following provisions under Section 8.4.4 of the Policy:

- Failed or refused to substantially comply with an approved plan (security plan);
- Failed or refused to substantially comply with any applicable Requirements set forth in Part VI or Part VII of the Public Event Policy, by violating Section 6.1.3.11 of the Policy (trash);
- Failed or refused to substantially comply with any applicable Requirements set forth in Part VI or Part VII of the Public Event Policy, by violating Section 6.4.6 of the Policy (trash);
- Eight counts of failed or refused to substantially comply with Part VI or Part VII of the Public Event Policy, by violating Section 6.16 of the Policy (unlicensed food vendors);
- Three counts of failed or refused to substantially comply with Part VI or Part VII of the Public Event Policy, by violating Section 6.16 of the Policy (Public Works street occupancy permit violations).”

Regarding the Permittee violation, she imposed the following penalties and stated, “Please note that the penalties listed above are cumulative. Since I find multiple violations from this Event, I am imposing the following penalties:

- First violation: consider this letter your written warning
- Second violation: \$100 plus 10% of \$7,975.00 permit fee = \$897.50
- Third violation: \$100 plus 20% of \$7,975.00 permit fee = \$1,695.00
- Fourth violation: \$100 plus 30% of \$7,975.00 permit fee = \$2,492.50 and loss of Priority Event status
- Fifth violation: Barred from being granted any event permit for three (3) years and loss of Priority Event Status.

The total penalty amount for violations by Permittee is \$5,085.00, plus the loss of your Priority Event status, and you (both individually and as your company) will not be eligible to obtain any event permit for three years.”

She indicated in the NOV at the conclusion that the penalties are based on Policy § 8.4.4 which details the fine schedule for Permittee violations.

Permittee Worker Violations and Penalties are found in the Policy § 8.4.5, and Ms. Haynes stated: “In addition to the violations I find against you as Permittee, I also find fifteen violations by Permittee Workers (8 unlicensed food vendors, and 7 imminent health violations), as noted above regarding food vendor violations.

Please note that the penalties listed above are cumulative. Since I find fifteen violations by Permittee Workers, I am imposing the following penalties:

- First violation: consider this letter your written warning
- Second violation: \$100 plus 5% of \$7,975.00 permit fee = \$498.75
- Third violation: \$100 plus 10% of \$7,975.00 permit fee = \$897.50
- Fourth violation: \$100 plus 15% of \$7,975.00 permit fee = \$1,296.25
- Fifth violation: \$100 plus 20% of \$7,975.00 permit fee = \$1,695
- Sixth violation: \$100 plus 30% of \$7,975.00 permit fee = \$2,492.50

The total penalty amount for violations by Permittee Workers is \$6,880.”

As referenced in the NOV, Ms. Haynes stated that the violations and penalties assessed against the Permittee or Permittee Workers is based on the following Policy Sections § 8.4.4, and § 8.4.5, including her authority under the City Charter and relevant case law. (McLauthlin v. City and County of Denver, 280 P.2d 1103, 1106 Colo. 1955 case Law (Denver City Charter 2.4.1, 2.4.2, 2.4.4 (A))

“Section 8.4.1 In General: If Permittee or the Permittee Workers fail to adhere to or violate the Requirements of this Public Event Policy, the terms or conditions in the Event Permit, the terms and conditions of any permit or license issued by a City Agency, or Applicable Law, the DPR Executive Director reserves the right and discretion:

- to suspend or revoke the Event Permit at any time and not to refund Fees paid by Permittee or the security deposit submitted under section 5.3.2; or, in the alternative,
- to impose restrictions or conditions on the current Event Permit, commensurate with the nature and extent of any violation and appropriate to rectify the violation or to assure no repeat violation, as the DPR Executive Director deems appropriate under the circumstances; and/or
- to have DPR Park Rangers issue administrative citation(s) to the Permittee or the Permittee Workers under the Parks Permitting Ordinance, the Park Use Rules & Regulations, and/or this Public Event Policy and in accordance with the Administrative Citations Rules & Regulations adopted by the DPR Executive Director. Also see Part VII of this Public Event Policy.

Section 8.4.4 Event Enforcement for Violations Caused by the Permittee: Upon issuance of the Event Permit and during the Event and Load-In and Load-Out, if the Permittee or any employees of the Permittee should do any of the following:

- Fails or refuses to substantially comply with approved plans;
- Fails or refuses to substantially comply with any Special Rules or other terms and conditions contained in the Event Permit (not otherwise addressed in section 8.4.3);
- Fails or refuses to substantially comply with required permits or licenses from other City Agencies; or
- Fails or refuses to substantially comply with any applicable Requirements set forth in Part VI or Part VII of the Public Event Policy.

In addition, the penalties set forth in this section 8.4.4, the Permittee may be subject to administrative citations as provided in section 8.4.1.”

CONCLUSIONS OF LAW

1. If the Hearing Officer determines, by a preponderance of the evidence, after reviewing the entire administrative Record that the Responsible Party is guilty of the alleged violations and that the administrative citation was lawfully given; the DPR’s decision is supported by substantial evidence and consistent with the substantive or procedural provisions of applicable ordinances or regulations; then the Hearing

Officer will affirm the DPR's decision and the burden shifts to the Appellant. (Park Use R&R's § V §§ G)

2. The Appellant has to establish by countervailing evidence or testimony that there is factual or legal grounds for showing the Appellant is not guilty or the administrative citation or penalty is objectionable, incorrect or not lawful. (Park Use R&R's § V §§ G)
3. As noted above, Park Use R&R's § VI §§ B (See also Title II, Chapter 2, Article XII § 2-291) concerns the content of the decision and states in part, the Administrative Hearing Officer shall issue a final decision regarding the violations and penalties assess. The section gives the AHO discretion to Order one of the following:
 - a. Uphold the administrative citation and penalties,
 - b. Uphold the citation and penalties and find mitigation, or
 - c. In addition to the actions specified in 1) or 2) above, enter such other reasonable order to the Responsible Party that will help assure future compliance with the Park Use R&R's commensurate to the nature and extent of the violation(s) which is the subject of the AEO; or
 - d. Dismiss the administrative citation as to any violation not proven.
4. The Hearing Officer will provide written notice of its decision to the appellant requesting an administrative review hearing, including the language found at Park Use R&R's § VI §§ A.
5. The Record in this case established that on May 19, 2017, the City submitted to the Appellant the NOV regarding the Denver 420 Rally held at Civic Center Park in Denver, Colorado (Policy § 1.4.1 and D.R.M.C. Title II Chapter 2 Article 12 § 2-285).
6. The Appellant pursuant to Park Use R&R's § IV §§ A, requested an Appeal of the NOV and the matter was set for administrative hearing and heard on September 19-20, 2017. As noted above the administrative hearing was heard pursuant to the Park Use R&R's § V §§ A-F.
7. Pursuant to the sections noted above Pre-Hearing briefs were submitted and made part of the record. At the hearing, testimony was taken from eleven (11) witnesses from the City and Appellant. All Exhibits were marked and admitted and those Exhibits are noted in the record and Exhibit list.
8. According to the Record on October 7, 2016, Mr. Lopez submitted an application to Denver Parks for a Permit for the 420 Rally to be held on April 20, 2017. The Department approved the application on April 7, 2017 with the conditions and requirements noted on the approval and accompanying documents (City Exhibit A).
9. On or about March 24, 2017, Mr. Lopez received a Street Occupancy Permit from the Denver Department of Public Works to stage the 420 Rally at 1437 Bannock, the occupancy conditions were noted on the permit and accompanying documents (City Exhibit J).
10. Following the hearing on September 19 and 20, 2017, the parties were ordered to submit written Post Hearing briefs, which were received by the AHO on or about October 12, 2017 and made part of the record. Ms. Carmody submitted a "Motion Objecting to the Post Hearing Brief, New Exhibits and Affidavits of Appellant Miguel Lopez" on October 11, 2017. Initially, Mr. Corry did not submit a responsive brief or motion and the City's Motion was granted on October 13, 2017. It is noted on November 13, 2017 the AHO received from Ms. Abbey Moffitt (Corry & Associates),

a Response to the City's Objection; however, as noted above the Motion by Ms. Carmody was granted on October 15, 2015 and sent to all parties.

11. The Record indicates that Mr. Lopez was issued permits by Department of Parks and Recreation and the Department of Public Works and was under a legal obligation to comply with the requirements of those permits and the statutory language under which they are governed; including but not limited to Policy § 1.2.1, § 3.1.2 and § 8.1; Park Use R&R's § I §§ B.
12. The Record, Exhibits, and testimony of all witnesses including that of Ms. Haynes establish by a Preponderance of the Evidence that Miguel Lopez is guilty of the violations noted in the NOV letter of May 19, 2017, and the Permits under which he was allowed to hold the 420 Rally. Those violations include:
 - Failed or refused to substantially comply with an approved security plan, by violating Section 6.16 and 8.4.4
 - Failed or refused to substantially comply with any applicable Requirements set forth in Part VI or Part VII of the Public Event Policy, by violating Section 6.1.3.11 of the Policy (trash);
 - Failed or refused to substantially comply with any applicable Requirements set forth in Part VI or Part VII of the Public Event Policy, by violating Section 6.4.6 of the Policy (trash);
 - Eight counts of failed or refused to substantially comply with Part VI or Part VII of the Department of Environmental Health, by violating Section 6.16 of the Policy (unlicensed food vendors);
 - Three counts of failed or refused to substantially comply with Part VI or Part VII of the Policy, by violating Section 6.16, 3.12.1, 3.12.2, 3.12.2.1. (Public Works street occupancy permit violations).
13. Clearly, the language of the Policy, City Code § 39-1 et seq., and Park Use R&R's, should be controlling, otherwise the terms of the Policy and regulations have no value. Without timely and appropriate enforcement of the DPR under which Ms. Haynes has authority, the public health, safety, and welfare is at risk. (City Charter §2.4.1 §2.4.2§2.4. 4. (A)). In this case, from the Record and testimony, Ms. Haynes found that Mr. Lopez "does not deserve to put on an event".
14. Mr. Corry argues that Miguel Lopez is not at fault for a variety of reasons including, Permittee Workers are at fault, and the violations are minor, 'No harm no foul', violations are not substantial, and the City approved the plans. However, the City notes that the Policy places directly on Mr. Lopez the responsibility to manage and effectively run this event (Policy § 8.1). Even if Mr. Lopez did not individually commit all noted violations, the Record viewed as a whole establishes that he as Permittee under the Policy and the relevant law, is the Responsible Party and subject to the penalties imposed by Ms. Haynes.
15. Mr. Corry raised the issue of a constitutional violation, there was no evidence presented by Mr. Corry to show the Department violated the Constitutional rights of the 420 Rally or Mr. Lopez, individually. He failed to present any countervailing evidence to demonstrate factually or legally that Mr. Lopez is not guilty of the violations or the penalty is objectionable, incorrect, or not lawful. Mr. Corry offers a brief list of factors that argue that the incidents that occurred are common industry

practices; they were expected or were corrected during the event; however, no evidence was presented to establish any of these arguments.

16. The five violations and penalties listed by the City in the NOV are authorized under the Policy § 8.4.4 and § 8.4.5; the Policy was sent to Mr. Lopez after he applied for the Park Permit in December 2016, the DEH Regulations were sent to Mr. Lopez in February prior to the 420 Rally. Mr. Lopez drafted the Run of Show, entered into the respective contractual agreements (Safety, Fencing, Food Vendors, and Trash) the City did not enter into these agreements or draft the documents.
17. The City argues that Ms. Haynes has the authority under the City Charter and Policy to set the penalties for the five (5) violations charged against 420 Rally and, specifically, Miguel Lopez and those penalties are authorized under § 8.1, § 8.4.4, and § 8.4.5. Ms. Carmody alleges and the Record confirms that Mr. Lopez was and is the Permittee and solely responsible for the violations and liable for the penalties and his arguments are questionable at best. “Permittee holding any Event Permit shall be responsible and liable for failure to perform in accordance with the Event Permit, this Public Event Policy and Applicable Law” (Policy § 8.1). The intent is clear, if you fail to provide and perform in accordance with the Permit in a responsible manner, you will be deemed to be held accountable under the Permit and law.
18. Mr. Corry argues that the lack of intent and efforts to correct violations is sufficient given de minimis violations. Mr. Corry notes that the experience of the 2016 Rally should have allowed Mr. Lopez to put in place conditions he was concerned about; however, nothing in the testimony or record show that he was limited or prevented in exercising his discretion. All evidence in the Record suggest that the City agencies simply responded to his plans or requests before the 420 Rally. There is no evidence concerning independence, management, and control that Mr. Lopez was prevented from organizing and planning the 420 Rally.
19. A review of the Record indicates that Mr. Lopez and the Denver 420 Rally has not established by a preponderance of the evidence or has the Appellant established by countervailing evidence or testimony that there is factual or legal grounds for showing the Appellant is not guilty of the administrative citation or the penalty is objectionable, incorrect, or not lawful (Park Use R&R’s § V §§ G). The findings found in the NOV will not be disturbed.
20. It is clear that Mr. Lopez and the 420 Rally is guilty of the violations in the NOV as presented at the evidentiary hearing. As the Record established:
 - a. Mr. Lopez obtained a Parks Permit to run the 420 Rally on April 20, 2017 and also obtained the Public Works permit to run the 420 Rally.
 - b. That in advance of the Rally, he was provided information concerning the regulations applicable for his compliance, including the Policy, Parks Permit, Public Right of Way, and DEH food guidelines. The Run of Show and contracts related to the 420 Rally were drafted and secured by Mr. Lopez. The equipment, vehicles, and food vendors were contracted with or purchased by Mr. Lopez, including the Safety and Security Agreement with Mr. Lucky. Mr. Lopez is listed as the owner, operator, and Permittee, he was assumed to have expertise in this field; he was given permission by the City to hold the 420 Rally; and Mr. Lopez agreed to comply with all the terms and conditions under which that permission was given. Whereas the Permittee Workers were

retained by him to manage various aspects of the 420 Rally, this includes Mr. Santino Walter.

- c. The evidence found in the Record establishes that by a preponderance of the evidence Miguel Lopez and the 420 Rally failed to comply with the terms and conditions of the City Permits and violated the rules and regulations of the Policy and Applicable law § 8.1, § 8.4.4, and § 8.4.5, respectively, and Park Use R&R's § V §§ G, and D.R.M.C. § 2.282. The findings by the DPR regarding the NOV on May 19, 2017 are upheld; the finding is correct and valid.
21. Although Mr. Corry argued the decision by DPR was not correct, it is found that the decision was not arbitrary and capricious; it is found that the decision is supported by substantial evidence and is consistent with the substantive and procedural provisions of the Code, Policy, and D.R.M.C. Title I Chapter 2 , Article XII, § 2-281, § 2-291 and, § 2-282.
22. Ms. Allegra “Happy” Haynes, the Executive Director, Denver Department of Parks and Recreation had an affirmative duty by the City Charter and ordinance to make a finding that the Appellant, Mr. Lopez, has failed to comply with the Permit and Parks Rules and Regulation. He has an affirmative duty to demonstrate that he has a right to retain the ability to obtain a city parks permit in the future. Pursuant to D.R.M.C. § 28-205 (c) (1) or the D.R.M.C. § 28-205(c) (3). Clearly, from the Record it is found that the decision of Ms. Haynes was not arbitrary and capricious and not an abuse of discretion. In this case, the evidence in the Record establishes supports the decision to impose the penalties arising from the NOV, loss of Priority Event Status and ban Miguel Lopez individually and The Denver 420 Rally from obtaining any Event Permit for three (3) years. The evidence and the law do not support the Administrative Review requested by Miguel Lopez and The Denver 420 Rally. The Appeal of Mr. Corry on behalf of Miquel Lopez and The Denver 420 Rally is denied.

It is **ORDERED**:

1. The Administrative Review of the Notice of Violation requested by The Denver 420 Rally and Miguel Lopez Case No. DPR 2017-101 is not granted pursuant to D.R.M.C. Title I Chapter 2 , Article XII, § 2-281 - § 2-291; Denver Parks and Recreation Administrative Citations Rules and Regulations § VI §§ A-B; Public Event Policy, Adopted October 25, 2016, § 8.2.1, § 8.4.6
2. The Penalties imposed by Ms. Haynes pursuant to Policy § 8.4.3, § 8.4.4 and § 8.4.5 are sustained, there is no finding of Mitigation.
3. All other requests of Mr. Corry are denied
4. The findings of Denver Parks and Recreation Executive Director Allegra “Happy” Haynes are upheld.

ORDERED this 17th day of November, 2017

David E. Ramirez (signature on file)

David E. Ramirez

Administrative Hearing Officer

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER was sent via U.S. Postal Service mail and/or emailed to the following parties this 17th day of November, 2017:

Allegra “Happy” Haynes
Executive Director Parks and Recreation
City and County of Denver
201 West Colfax Avenue, Department 601
Denver, CO 80202

Renee Carmody
Assistant City Attorney
City and County of Denver
201 West Colfax Avenue, Department 1207
Denver, CO 80202
renee.carmody@denvergov.org

Robert Corry
Corry & Associates
473 West Colfax Avenue
Suite 300
Denver, CO 80202
rob@robcorry.com

MAILED this 17th day of November, 2017

/David E. Ramirez/ (signature on file)

David E. Ramirez
Administrative Hearing Officer

