



Information Item

Date: November 3, 2009

To: Mayor and City Council
From: Jennifer Phillips, Assistant City Manager
Subject: City Response to Aggressive Freelance Photographers

Introduction

On June 9, 2009, the City Council directed staff to investigate intrusive, invasive and unwanted activities of “paparazzi” photographers and videographers around areas where children congregate or attend classes, and return with recommendations on actions to protect the privacy and safety of the affected children and their families, teachers, and school staff. Locally, freelance paparazzi have focused on a school to capture photographs or videos of celebrities as they drop off or pick up their children. The unwanted and at times illegal behavior of the paparazzi has resulted in confrontations with members of the public, children, and/or celebrities. School and City staff met and are working collaboratively to identify and implement both short-term and long-term strategies to address concerns generated by the activities of the paparazzi.

Background

Increased fascination with the personal lives of celebrities and public figures has created a lucrative business for some freelance photographers, more commonly referred to as paparazzi. The paparazzi are known for using extreme measures to photograph celebrities at inopportune moments and typically when the subjects are most accessible. A number of children whose parents are celebrities attend schools in

Santa Monica, where the paparazzi attempt to photograph them as their parents drop off or pick them up.

Often, paparazzi will swarm celebrities and their children as they approach schools in their private vehicle, attempting to secure photographs. Tactics used by the paparazzi have endangered the celebrities and their children, other children, school staff, the general public, and others in close proximity. Public access and the geographic configuration of some schools can make discreet ingress or egress difficult. Complicating the issue further are First Amendment Rights allowing the paparazzi to legally occupy or use public areas.

A search of Calls for Service (CFS) records (from 2007 – 2009) shows that the Police Department has responded to more than a dozen incidents related to the paparazzi near one school.

At some schools, staff has attempted to mitigate the impact of paparazzi activity through verbal warnings; however, the warnings are typically ignored and the paparazzi continue with aggressive, unwanted, and sometimes unlawful behavior. When private vehicles are parked in close proximity to the schools, paparazzi climb on them attempting to increase photographic opportunities. Additionally, paparazzi have been seen climbing fences, walls, and/or suspending their cameras over railings to secure celebrities photographs.

Discussion

Following direction of the City Council, staff from the City Manager's Office and Police Department met with staff from one local school that is currently being targeted by the paparazzi to discuss options toward mitigating illegal and unwanted activities. School and City staff are working collaboratively to identify and implement long-term strategies to address concerns generated by the paparazzi. In response to the aggressive actions of the paparazzi, the Police Department identified the following short-term specific countermeasures to increase the safety:

- Create a visible police presence during peak drop-off and pick-up times, as necessary.
- Issue citations for observed state and municipal code violations.
- Collaborate with the schools to identify discreet drop off, pick up, or staging areas for celebrities and their children.
- Participate in “Parent Night” to discuss safety with school staff and parents.
- Conduct on-site safety surveys at schools and making security recommendations as appropriate.
- Collaborate with the Planning and Community Development Department – Transportation Management Division to implement additional traffic controls.

Additional options discussed include the schools’ hiring private security guards and training school staff on private persons’ arrest protocols. City staff will continue to work with schools that experience safety concerns with paparazzi in an effort to provide safe and reasonable access to the schools for both parents and children.

In addition, the City Attorney advises that the City has limited legal authority to control the activities of news photographers, including paparazzi, because the First Amendment protects news gathering, particularly on public streets. *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972). There are very few cases, balancing these rights in the context of taking pictures of public figures. See, e.g., *Galella v. Onassis*, 353 F. sup. 196 (SDNY 1972) [holding that a paparazzi's harassing conduct was not protected by the First Amendment and violated Jackie Onassis' privacy rights.]. And, there are no reported decisions involving local laws shielding celebrities from the paparazzi.

California law does provide private remedies that can be used by celebrities against the paparazzi in some circumstances. The common law tort of invasion of privacy affords a private remedy against one who "intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another his private affairs or concerns ... if the intrusion would be highly offensive to a reasonable person." *Richardson-Tunnell v. School Insurance Program*, 69 Cal. Rptr. 3d 780, 786 (2007) [quoting the Restatement of Torts]. Additionally, a statutory remedy is provided by Civil Code Section 1708.8. It was amended in the wake of Lady Diana's death, which occurred while she was being pursued by paparazzi, to impose liability against a person who "attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image ... of the plaintiff engaging in a personal ... activity under circumstances in which the plaintiff had a reasonable expectation of privacy ...if this image ... could not have been achieved without a trespass unless [a] visual or auditory enhancing device was used."

(Emphasis to qualifications added.). This language probably affords protection against, for instance, the paparazzi using telephone lenses to take pictures of celebrities' children inside their private nursery school from a distant public space. However, the recourse afforded by these laws is limited, largely because the First Amendment protections are broad and are broadest in public streets.

This does not mean local governments are powerless. Laws prohibiting assault, battery, stalking and trespassing are routinely enforced in Santa Monica and elsewhere by the police and prosecutors. However, these laws only protect against the worst abuses. In addition, AB 524 (Bass) was recently signed by the Governor, which strengthens current law dealing with invasion of privacy by extending the sanctions against defendants that knowingly use or sell illegally-obtained photographs or recordings.

Prepared By: Phillip L. Sanchez, Deputy Chief of Police, Santa Monica Police Department.