



OFFICE OF THE MAYOR
LOUISVILLE, KENTUCKY

GREG FISCHER
MAYOR

April 12, 2012

Mr. Chris Harrell
2500 Bardstown Road, Suite 4
Louisville, KY 40205
VIA FAX: (502) 456-0079

Dear Mr. Harrell:

This will acknowledge receipt of your appeal faxed to Director Mims' office on April 10, 2012. It has been directed to me for review and decision. For the reasons stated herein, the appeal of Occupy Louisville is denied.

Your appeal letter takes issue with the finding that Founder's Square has not been fully accessible to the general public due to the occupation of the premises by your client. We disagree. The proliferation of tents, grills, coolers, and other personal items of the Occupy Louisville participants have impeded full access to and precluded the unfettered use of the entire property by the general public even if the occasional citizen has ventured through the maze of your clients' personal property or paused to sit on one of the benches. More important, your appeal letter does not address the serious damage to the property caused by your clients' occupation of the property and Metro Government's need to reclaim it for refurbishment. Reclaiming the property for this purpose was apparently critical to Director Mims' decision. Furthermore, destruction of public property does not fall within protections afforded by the First Amendment.

You next claim that Metro Government should have made demand for payment of the outstanding electrical bill and that "[a]t no point has Occupy Louisville ever asked the City to pay for electrical use at Founder's Square." Occupy Louisville has been encamped in Founder's Square since October, 2011, and until the last permit required payment of electrical use, there is no evidence Occupy Louisville made any offer to reimburse Metro Government for its months of electrical use in Founder's Square. It is clear to me that the \$500 "deposit" you referenced was to be applied to the outstanding balance of the electric bill for Founder's Square at the time the previous permit was issued and it was the responsibility of the previous individual applicant to insure that arrangements were made to timely pay any future balance attributable to Occupy Louisville's electrical use. In my view, it was the responsibility of the previous individual applicant to insure timely payment by contacting Director Mims or his

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designee regarding the electrical bill, but that was not done. I concur with Director Mims' assessment that the lack of any continuity in leadership or any individual responsibility for Occupy Louisville's permitted activities significantly contributed to this problem.

Next, your appeal letter attempts to minimize your client's lack of security precautions by an analogy to Thunder Over Louisville. Your analogy is not well taken. Thunder is a public entertainment event that lasts for one day and involves hundreds of thousands of spectators spread out over hundreds of acres. Because of the public nature of the event, there is a significant police presence both requested by the sponsors and required by Metro Government. All applications submitted on behalf of Occupy Louisville clearly state under the "Security" section: "NOTE: Event producers must provide adequate security for event management and crowd control." None of the Occupy Louisville permits detail any arrangements for security of the events and even marked the section "N/A." Obviously, if as you say in your letter, "[i]t is not unreasonable to expect that altercations will, at times, occur in public settings" then it was the responsibility of Occupy Louisville to minimize such risk with a security plan or private security personnel. It did not do so and this office affirms Director Mims' decision that lack of security for the participants is a contributing reason for the original denial of the permit and this appeal.

Finally, you assert that the last reason for Director Mims' denial of the permit was that Mr. Barfield was a different representative than the previous individual applicants. That assertion, however, is inaccurate. Director Mims' denial letter noted that there had been different individual applicants, but it also observed that certain Occupy Louisville representatives with whom Codes and Regulations had dealt objected to Mr. Barfield's representative status and the issuance of another permit. The denial letter specifically stated such circumstances "did not dictate our decision" but "reinforced it." Your appeal letter clearly confirms Director Mims' concerns in this regard when you state "Occupy Louisville does not and has not ever had designated responsible parties because that violates the very founding principles of Occupy Louisville." From this assertion, then, we can only assume that no individual had the authority to seek, or be responsible for, prior permits or the current application on behalf of Occupy Louisville unless so designated by Occupy Louisville's "General Assembly." Thus, it is clear to this office that Mr. Barfield misrepresented his capacity without some documented authority from the "General Assembly" for his agency. In that regard, your attention is directed to the "Hold Harmless and Indemnification Clause," especially the last sentence, which immediately precedes Mr. Barfield's signature on his March 27, 2012, application. It states: "*Any misrepresentation in this application or deviation from the final approved specification and activities described herein or failure to abide by all Federal, State, and Louisville Metro Laws, ordinances, policies and procedures may result in the immediate revocation of the approved permit and/or refusal to issue a permit in the future.*"

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(emphasis added). A misrepresentation obviously would be a signator without the authority of the alleged sponsor. I would note from your comments quoted in the Courier-Journal article of April 6, 2012, ("All I see the commitment for is for people to sleep in a tent. I don't see the organization that has to happen for this to be a realistic group"), it certainly appears you are equally frustrated by the lack of organizational responsibility on the part of your client.

Therefore, for the reasons stated herein, your appeal dated April 10, 2012, is hereby denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Ishmon F. Burks", with a long horizontal line extending to the right.

Ishmon F. Burks
Chief of Public Safety

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cc: Ellen Hesen, Chief of Staff, Mayor's Office
James Mims, Director, Codes and Regulations
N. Scott Lilly, County Attorney's Office