



# NYCLU

NEW YORK CIVIL LIBERTIES UNION

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HAND DELIVERED AND SENT VIA FIRST CLASS MAIL

January 9, 2012

Commissioner Robert LiMandri  
Department of Buildings  
280 Broadway, 7th floor  
New York, NY 10007

Re: Violations at 1 Liberty Plaza

Dear Commissioner LiMandri:

The New York Civil Liberties Union, the Center for Constitutional Rights, and the National Lawyers Guild's New York City chapter write regarding the ongoing violations of city law at 1 Liberty Plaza (165 Broadway), owned and managed by Brookfield Office Properties. Since November 15, 2011, metal barricades have encircled the perimeter of Liberty Plaza. In addition, members of the public are subject to *ad hoc*, arbitrary and inconsistent rules and conditions restricting their use of the park. These practices have substantially modified Liberty Plaza, making it a wholly inhospitable space for the public. Putting aside for the moment the serious constitutional concerns raised by these practices, it is abundantly clear that such restrictions are in direct conflict with zoning laws, Brookfield's legal obligations under a 1968 special zoning permit, and longstanding City policy. These restrictions significantly interfere with the public's use of Liberty Plaza on an ongoing and daily basis, and should be ended immediately.

A. Laws governing Liberty Plaza require unobstructed public access and prior approval of design modifications.

By the terms of a March 20, 1968 special zoning permit, the owner of 1 Liberty Plaza gained valuable zoning concessions in exchange for constructing and maintaining what is now Liberty Plaza as a "permanent open park" for the "public benefit."<sup>1</sup> Under City zoning laws, Liberty Plaza is defined as a "public plaza," and one over five hundred privately owned public spaces ("POPS") in New York City.<sup>2</sup> Under these laws, at least 50% of the sidewalk frontage of a public plaza must be free of obstruction, and circulation paths must connect to each of the street

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<sup>1</sup> City of New York Special Zoning Permit, CP-20222, No. 4, p.215 (March 20, 1968).

<sup>2</sup> NYC Zoning Resolution § 12-10.

frontages.<sup>3</sup> In addition, any proposed modifications to public plaza's design must first go through an approval process before those changes can be made.<sup>4</sup>

Furthermore, an owner's ability to restrict the public's use of a public plaza is constrained by zoning laws and by City policy. An owner of a public plaza may not, of course, forbid conduct in public plazas that is otherwise protected by the constitution. In addition, an owner "shall not prohibit behaviors that are consistent with the normal public use of a public plaza."<sup>5</sup> Any other restrictions an owner seeks to impose on the public's ability to use or access a public plaza must be "reasonable," pursuant to long established City policy.<sup>6</sup> Finally, any prohibition on conduct in a public plaza must be clearly posted in writing.<sup>7</sup>

**B. Blocking Access to Nearly All of Liberty Plaza Violates City Zoning Law and Brookfield's Legal Obligations.**

For nearly two months public ingress and egress to Liberty Plaza has been blocked by metal barricades encircling the public plaza. The public is only able to enter and exit Liberty Plaza at two gaps, and at these points members of the public have been subject to searches of their personal belongings by security personnel.<sup>8</sup>

As noted above, to ensure the public's ability to freely enter and exit public plazas, zoning law requires that at least 50% of Liberty Park's frontage be unobstructed, and also mandates unrestricted access to and from circulation paths. The metal barricades encircling Liberty Plaza enclose far more than 50% of the frontage and block access to major nearby walkways, in violation of zoning laws.

In addition, a barricaded encirclement patrolled by security personnel seriously interferes with the public's use and enjoyment of Liberty Plaza, in violation of Brookfield's legal obligation to maintain the space as a permanent open park. Any member of the public would be reluctant or unwilling to enter an area closed in by metal barricades with only two exits. This modification presents even more serious safety concerns when large numbers of people are attempting to enter or exit the park through two narrow gaps in the barricades. The barricades have all but ended Liberty Plaza's role as a functioning public plaza.

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<sup>3</sup> NYC Zoning Resolution §§ 37-721; 37-723; 37-726.

<sup>4</sup> NYC Zoning Resolution §§ 37-62 et. seq; 37-78; 74-91.

<sup>5</sup> NYC Zoning Resolution § 37-752.

<sup>6</sup> The New York City Department of City Planning, Jerold S. Kayden, and the Municipal Art Society of New York, *Privately Owned Public Space: The New York City Experience* (John Wiley & Sons, 2000), p.38 ("The Department of City Planning has taken the position that an owner may prescribe 'reasonable' rules of conduct").

<sup>7</sup> NYC Zoning Resolution § 37-73 et. seq.

<sup>8</sup> Security personnel at Zuccotti Park at various times have included NYPD officers, off-duty NYPD officers employed by Brookfield, and private security staff employed by Brookfield, who often act in concert with, take direction from, and rely upon, NYPD officers.

Finally, the barricades constitute a major design modification to Liberty Plaza—and as their presence at the park approaches two months, a seemingly permanent one—that circumvented the approval process required before the design of a public plaza can be altered. The barricades should be removed immediately.

C. Constantly-Changing Unwritten Rules Unreasonably Restrict the Public’s Use of Liberty Plaza in Violation of City Law.

Brookfield has purported to adopt written “rules of conduct” governing Liberty Plaza. The manner in which these rules were adopted raise serious constitutional concerns, as do the rules themselves.<sup>9</sup> Even assuming these regulations could be validly enforced, however, security personnel go far beyond these written rules by selectively enforcing ever-shifting and unwritten *ad hoc* prohibitions. These unjustifiable restrictions are a serious, ongoing and daily infringement on use of the public plaza.

At the heart of these restrictions is the assertion of security personnel that certain items are prohibited in the park. The written “rules of conduct” do not, of course, prohibit any particular item from entering Liberty Plaza. Instead, consistent with zoning laws, the written rules forbid only conduct. These rules do not, and could not, entitle security personnel to turn an individual away from a public plaza simply because he or she has a personal item that security personnel speculate might be potentially used to engage in prohibited conduct sometime in the future.

Nevertheless, security personnel have declared that certain personal possessions are prohibited in Liberty Plaza. The unwritten list of prohibited items varies daily and is wildly inconsistent. Individuals have been refused entry for possessing food, musical instruments, yoga mats, cardboard signs, shawls, blankets, “prohibited containers,” chairs, bags of varying sizes, and numerous other personal items. To effectuate the enforcement of the unwritten list of “prohibited items,” security personnel have stopped individuals attempting to enter Liberty Plaza and forced them to submit to a search of their personal belongings. Individuals who refused to permit their personal belongings to be searched have been prohibited from entering the public plaza.

Almost all the items that have been prohibited in Liberty Plaza—signs, bags, containers, food, musical instruments, etc.—have also been allowed to enter the park at other times. Who is searched and what is prohibited is arbitrary and inconsistent. It varies by the day, the type of activity in the park at the time, the attire of the person attempting to enter, and the caprice of security personnel.

The inconsistent and selective enforcement of unwritten and constantly changing rules, and preemptive searches of individuals attempting to enter the park, violates the terms of the special zoning permit which obligates Brookfield to maintain Liberty Plaza as a permanent open park for the public benefit. These practices also violate zoning laws by prohibiting behavior that

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<sup>9</sup> In addition, as written and posted by Brookfield, the rules appear to violate City zoning laws governing the manner and form for “prohibition signs”. See N.Y. Zoning Resolution §§ 37-747; 37-751; 37-752.

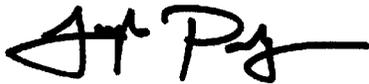
is normally permitted in public plazas. Finally, selectively enforcing unwritten rules is patently unreasonable, and therefore violates longstanding New York City policy constraining the type of regulations on conduct an owner may adopt in a public plaza.

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Metal barricades, preemptive searches, and selectively enforcing ever-changing unwritten rules have become established features of Liberty Plaza. These practices infringe on clearly established constitutional rights, and they also violate zoning laws, Brookfield's legal obligations under the 1968 special zoning permit, and City policy. As the Mayor has noted with regard to Liberty Plaza, "we must never be afraid to insist on compliance with our laws."<sup>10</sup> These practices violate city law and should be ended immediately, restoring Liberty Plaza to its place as a permanent open park that is open and accessible to all members of the public on an equal basis.

We request a prompt final determination from the Department of Buildings<sup>11</sup> and/or any other appropriate New York City agency, in writing, with regard to this complaint.

Sincerely,



Taylor Pendergrass  
Senior Staff Attorney  
New York Civil Liberties Union

Baher Amzy  
Legal Director  
Center for Constitutional Rights

Gideon Orion Oliver  
President  
National Lawyers Guild, New York City Chapter

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<sup>10</sup> Statement of Mayor Michael R. Bloomberg on Clearing and Re-Opening of Zuccotti Park (Nov. 15, 2011).

<sup>11</sup> NYC Charter § 643 (Department of Buildings "shall administer and enforce" zoning laws); NYC Zoning Resolution § 71-00 (same); NYC Zoning Resolution § 37-78(d) (an owners' failure to comply with requirements applicable to public plazas "shall constitute a violation" of zoning laws and Department of Buildings may enforce the violation by revocation of building permit, revocation of certificate of occupancy, or any "other applicable remedies").